CONFEDERATION FOR
THE TWENTY-FIRST CENTURY

DISCUSSION PAPERS ON BRITISH COLUMBIA IN CONFEDERATION

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Contents

Confederation for the Twenty-First Century:
Discussion Papers on British Columbia in Confederation

Preface ..... *i*

About the Authors ..... *iii*

English Canada and Quebec's Rendezvous with Independence
(The Martland Lectures)- Thomas R. Berger *1*

The Course of True Love Never Did Run Smooth
Ron Burns *7*

With Our Nation in Peril, What should British Columbia Do?
R.M. Clark *15*

Constitutional Reform: A Radical B.C. Perspective
Tex Enemark *29*

Brief to the Cabinet Committee on Confederation
La Fédération des Franco-Colombiens
Yseult Friolet; Executive Director *42*

Re-ordering Canada
Walter Hardwick *50*

British Columbia and Canada's Future
Alma D. Howard with the assistance of Jakob Knaus *56*

Constitution-Making For An Era of Transition
Professor Edward McWhinney, Q.C. *64*

Thoughts on Constitutional Position for British Columbia
Rafe Mair *72*

Canada's Future
Cyril Shelford *77*

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Preface

Renewing Canada's Constitution will be a crucial challenge which British Columbians and all Canadians must meet in the coming months. While many British Columbians may be impatient with the continuing constitutional debate and may prefer to address pressing economic issues, the decisions we make in renewing the Canadian federation will ultimately have an impact in determining Canada's long term prosperity. Indeed, one might view the constitutional reform process as an opportunity for both British Columbia and Canada to better position themselves to meet the demands of an increasingly globalized and competitive world economy. Therefore, from both economic and constitutional perspectives, British Columbians must ensure that they are adequately prepared to enter this fundamental reassessment of the Canadian federation.

The Government of British Columbia has identified consultation with British Columbians as the key component in preparing a British Columbia position on constitutional change. The Government recognizes that British Columbians, as strong and proud Canadians, want mechanisms for voicing their views on Canada's constitutional future. Last December, the Government of British Columbia established a Cabinet Committee on Confederation responsible for developing British Columbia's position on constitutional reform and its first priority was to initiate a process for soliciting the views of British Columbians. The Cabinet Committee published a background discussion paper in March 1991 to provide British Columbians with background information on constitutional issues and options to assist them in developing their own conclusions on constitutional reform.

In May, a second paper, authored by Melvin H. Smith, Q.C., was published. This directions paper, commissioned by the Government of British Columbia, included the author's recommendations on specific positions for the Government to consider in formulating its approach for upcoming constitutional negotiations.

The present volume represents an additional element in the Government's consultation process. The Cabinet Committee saw a need to complement the publications discussed above with a further publication which would facilitate reflection on these important issues. Therefore, the Committee invited a number of British Columbians from various walks of life to submit papers outlining their perspectives on our Province's future role in Canada.

The papers that follow are meant to provide British Columbians with different views on the current constitutional debate, options to consider, and the implications of those options. While each of these papers may provide an alternate direction for British Columbia to pursue, their analyses and arguments will raise questions which need to be considered. Obviously, with such a wide range of perspectives and options as are included in these papers, this volume is not intended to represent the position of the British Columbia Government or its constitutional priorities. The views expressed here are those of the individual authors and those authors have described their varied backgrounds on the following pages. The papers are published in this volume to assist British Columbians, by distributing this wide range of perspectives, in forming their own opinions on these constitutional questions. In doing so, it is hoped that they will stimulate discussion and help build a consensus on the appropriate direction to be taken by British Columbia.

In addition to the work of the Cabinet Committee on Confederation, the Legislative Assembly has adopted the Government's motion to establish a Select Standing Committee on Constitutional Matters and

Intergovernmental Relations. This all party committee will provide a forum for the people of British Columbia to offer their advice and recommendations to the Legislature. In concert with the work of the Cabinet Committee on Confederation, the findings of the Select Standing Committee will contribute to the development of the British Columbia approach to constitutional reform.

On behalf of the Government of British Columbia, the Cabinet Committee on Confederation wishes to express its thanks to the authors of the papers in this volume. Their investment in time and energy is greatly appreciated and will certainly contribute to identifying British Columbia's interests in Canada's constitutional renewal.

Cabinet Committee on Confederation
July, 1991.

About the Authors

Thomas R. Berger was called to the British Columbia bar in 1957; he was a British Columbia Supreme Court Judge from 1971 to 1983; he is currently practising in Vancouver, British Columbia.

Ron Burns was the Assistant Deputy Minister for British Columbia's Ministry of Finance from 1946-54. He was the Director of the Federal-Provincial Division of Canada's Department of Finance from 1954-59 and the Deputy Minister of Manitoba's Department of Finance from 1959-65. Mr. Burns was a Professor of Political Studies and the Director of the Institute of Intergovernmental Relations at Queen's University from 1965-76. Mr. Burns was also the Chairman of the Advisory Commission to the Cabinet on the Constitituion in British Columbia from 1977-82. Mr. Burns is now retired.

R.M. Clark was born in Vancouver in 1920. He received his B.Com. and B.A. in Honours Economics from the University of British Columbia and his A.M. and Ph.D. in Economics from Harvard University. He taught Public Finance in the Department of Economics at the University of British Columbia from 1946-1985. Dr. Clark is now retired.

A third generation British Columbian, ***Tex Enemark*** is a Vancouver businessman and consultant who studied Canadian federalism, American history and law at U.B.C. He was Executive Assistant to a Minister in the federal government 1970 - 73, during which he attended the Victoria Constitutional Conference and the first Tri-level Conference, (1972). As a Deputy Minister in the B.C. Government (1976 - 80) Mr. Enemark was involved in federal-provincial discussions and has had ongoing contact with both levels of government as a businessman, a public policy consultant, and an association president.

Mr. Enemark participated in the affairs of the Liberal Party for much of the 1960 -1990 period and was a candidate for Parliament in 1988. He no longer has any political affiliation.

La Fédération des Franco-Colombiens was established in 1945 from a common need for unity by existing francophone organizations of that era. The Fédération des Franco-Colombiens soon became the official spokesman for the francophone community in British Columbia. The mandate of the F.F.C. is to promote and represent the rights and interests of francophones in British Columbia. With now an active membership of some 32 associations, the F.F.C. encourages dialogue among its members and offers support and development services in communication, culture, education, economy, youth and community endeavours.

Dr. Walter G. Hardwick is a Professor at the University of British Columbia where he teaches urban and political geography. He is formerly an alderman for the City of Vancouver (1968-74), Director of the Greater Vancouver Regional District (1972-74), Deputy Minister of Education and Science in British Columbia (1976-80), Chairman of the Advisory Deputies of the Council of Ministers of Education, Canada (1979-80), founding Chair of Knowledge Network (1980-88), and the Open Learning Agency (1985-88). In 1990 he chaired the Greater Vancouver Regional District's, "Choosing our Future" planning program. In 1990-91 he was Chair of the National Capital Planning Committee, Ottawa-Hull.

Alma D. Howard was born in Regina, Saskatchewan, in 1944 and grew up in a combination of small towns and major cities from Saskatchewan to Ontario. She is an Executive Secretary by profession and has worked for C.E.O.s and a Cabinet Minister. Her constant, personal study of Canadian history, culture and identity brought her into contact with innumerable Canadians from all parts of the country - of all political persuasions, cultural and ethnic backgrounds and professions - and with the concerns and observations mirrored in her submission.

Jakob Knaus was born in St. Gallen, Switzerland, in 1927. He was educated at commercial college and finished with the cantonal diploma of commerce. He worked with the largest Swiss "Export Organization" with branches all over the world and was Managing Director when he retired in 1984 after a career of 34 years. He served as Vice Consul for the Norwegian Consulate in Sri Lanka, and in recognition of his services was awarded a medal (Ridder of the Order of St. Olav) by the Norwegian King. During his worldwide travels in connection with marketing, he came into contact with many systems of government, economies and customs. He immigrated into British Columbia, Canada, in the fall of 1984 and has taken an active interest in its political development and education. He has a good knowledge of constitutional reforms, (Senate, initiatives, referendums, proportional voting systems, etc.) due to his Swiss background.

Edward McWhinney, Q.C., is Professor (Constitutional Law and International Law) at Simon Fraser University in Vancouver. He has been a legal advisor and consultant to the Ontario, Quebec, and federal governments, and to the United Nations and a number of foreign governments. He is the author, among other books, of the constitutional trilogy, Quebec and the Constitution (1979), Constitution-Making (1981), and Canada and the Constitution (1982), (all University of Toronto Press, Toronto).

Rafe Mair is a lawyer-broadcaster who presently hosts "The Rafe Mair Show", a public affairs show on radio station CKNW. Mr. Mair was a B.C. Cabinet Minister between 1975-80 and amongst his duties, chaired the Cabinet Committee on Confederation.

Cyril Shelford was born at Francois Lake, British Columbia, in 1921. He was brought up on a farm in a very rural area of northern British Columbia where schooling was by correspondence courses. He joined the Canadian Army at 18 and served overseas for 5 1/2 years in England, Italy and Western Europe. Between 1945 and 1952 he was involved in contract logging and also owned a small saw mill. He was elected to the British Columbia Legislature in 1952 with the first Social Credit Government. He was appointed to Cabinet in 1968 to 1972, until defeat. He served on Terrace Council for two years - 1973 to 1975, and was re-elected to the Legislature in 1975, serving as Minister again from 1978 to defeat in 1979. He advised B.C. Hotel Association and Insurance Agents Association for 8 years on government relations and wrote two best-selling books: From Snowshoes to Politics and We Pioneered. He was appointed to the B.C. Forest Commission in 1989 to the present.

English Canada and Quebec's Rendezvous with Independence

The Martland Lectures
By Thomas R. Berger

Delivered at:

- *University of Calgary, March 5, 1991*
- *University of Lethbridge, March 6, 1991*
- *University of Alberta, March 7, 1991*

What should English Canada's response be as Quebec moves towards its rendezvous with independence?

Since the death of Meech Lake, we have heard repeatedly that Quebec knows what it wants, that English Canada must get its act together, and come up with a response to the proposals that Quebec is making for fundamental constitutional change.

The flaws in Meech need not be reiterated. What was to have been Quebec's round became the provinces' round. To obtain the provinces' agreement to Quebec's five points, the federal government agreed to enlarge the powers of all the provinces. The Meech Lake Accord gave Quebec - and all the provinces - more than they had at first sought.

We are told that the Meech process was flawed, too, that what is needed is a new process. Of course the Meech process was flawed. The First Ministers did not use the amending procedure provided in the Constitution Act. The result was that amendments requiring the consent of only seven provinces could not be proclaimed because they had to be unanimous, and amendments which required unanimity but which were subject to no time limit had to be passed by June 23, 1990. By this means the First Ministers laced themselves, and the country, into a constitutional straitjacket.

Meech's death alarmed Canada's political establishment. We were told that Quebec would treat the rejection of Meech as a rejection of Quebec, and that this would mean the end of Canada as we know it. The defeat of Meech, it is said, has revived the dragon of Quebec nationalism. If only we had not rejected Meech, the cause of Quebec independence would have no following in Quebec today. This just won't wash.

We would have been in worse condition if Meech had passed. By rejecting Meech we preserved the Supreme Court as a national court and we made sure that Senate reform was not translated into nothing more than a Senate that is a repository for provincial instead of federal hacks and mediocrities. We thwarted a transfer of powers to the provinces that would have undermined federal programs and institutions. And the passage of Meech would not have accommodated Quebec nationalism, let alone the Quebec independence movement.

If Quebec nationalism is on the rise, it is surely due to a widespread sense of linguistic and cultural solidarity, not a reaction to the rejection of Meech. Does anyone really believe that if Meech Lake had been adopted, Quebec nationalists would have been satisfied? That believers in independence would have been satisfied? Of course not. And why should they have been? Quebec nationalists believe that confederation must be fundamentally restructured if Quebec should remain in Canada. Of course, independantistes do not think Quebec should remain in Canada under any circumstances. If Mr. Parizeau wins the next election, he is going to hold a referendum. Would the passage of Meech Lake have made any difference? No. It might have spared us Mr. Bourassa's referendum, but not Mr. Parizeau's referendum.

Now the Prime Minister and the Canadian political establishment are telling us that we must respond to the Allaire Report and the Belanger-Campeau report; according to Keith Spicer, this is the purpose of his Forum, to

respond to proposals from Quebec, "no matter how radical" they may be.

I disagree. It is time to take stock of what Canada means to English Canada (by that I mean Canadians outside Quebec) and not to rush into another round of constitutional talks. At any such talks, as at Meech Lake, there would be no one to speak for Canada. Certainly not Mr. Mulroney. He is a deal maker, not a nation builder. The premiers speak for the provinces, not for Canada. All that will occur will be further concessions to the provinces, further undermining of Canadian federalism. Although this may send the premiers home happy, it will be catastrophic for Canada as we know it.

The idea of Canada is an idea that will keep us together even if Quebec should opt for independence. The Meech Lake debate revealed the strength of that idea. English Canadians had a greater commitment to that idea - a greater faith in that idea - than our leaders did. That is why Meech failed; not because of cranky opposition by the people of English Canada to the distinct society clause. They sensed - even if they did not understand the details - that Meech Lake was another chapter in the Mulroney government's dismantling of Canada's federal system.

Traditional Canadian deference to our political establishment was absent during the Meech Lake debate. Although everyone from Brian Mulroney to Stephen Lewis urged us on, the people of English Canada rejected this creation of their political leaders. And we were right to do so.

Soon Mr. Mulroney will propose an even more drastic transfer of federal powers. But this will appease no one in Quebec. Not even the Conservatives will agree to transfer the multitude of federal powers claimed for Quebec in the Allaire Report. For <u>independantistes</u>, independence will always beckon. Quite rightly. We Canadians believe in the self-determination of nations. It is too late to argue that Quebec is not a nation. If Quebecers decide that they want to be independent, to establish their own nation-state, that is for them to decide.

It is time we took Quebec's movement for independence seriously. Mr. Mulroney and others seek to establish an equivalence between Western alienation and the demands of Quebec. Each is said to be a form of regional discontent, curable by transferring federal power to the regions. But they are antithetical ideas. It is true that Western politicians ask for more powers. They always have and they always will. But the only proposition they have advanced that has popular support across the West is Senate reform. And Senate reform is intended to give the West greater influence in the government of Canada, whereas independence is intended to put an end to Quebec's connection with the government of Canada.

Western alienation is not an issue of the same order of magnitude as Quebec independence. To equate these stale cries for political aggrandizement to Quebec's call for national independence is to magnify the one and to trivialize the latter.

In fact, the departure of Quebec would by itself reform the Senate. The principal complaint of those seeking reform of the Senate is that it does not act as a counterweight to central Canada's dominance of the House of Commons. If Quebec leaves, central Canada, which now has 48 senators, would be reduced to Ontario's 24. Western Canada would have 24 senators, the Maritimes 24, and Newfoundland 6. The NorthWest Territories and the Yukon would each have one. There would remain as well 6 of the 8 appointments made to pass the G.S.T. From there it is only a step to an elected Senate, for the principal opponent of an elected Senate is Quebec. With Quebec gone, the way would be open.

But westerners should not think that a reformed Senate would change Canadian life. Populations and markets are smaller in the western provinces than they are in the large, populous provinces of Ontario and Quebec, with their great metropolitan centres. That is

why central Canada is the financial and commercial hub of the country. A reformed Senate would not change that. It has been the federal spending power, transfer payments, equalization payments and regional development policies that have addressed the inequities produced by these economic tendencies. And these federal powers and programs must be preserved. Those who think that Senate reform can alter geography and demographics are bound to be disappointed.

Of course Quebec is a distinct society (it is puerile to suggest that each of the other provinces is a distinct society in the same sense in which Quebec used the term); Quebec's distinctiveness ought to be recognized in the Constitution. The Civil Code gives it a distinct legal system. The French language is predominant in Quebec. Quebec has its own pension plan. It collects its own income tax. It has a special arrangement with Ottawa regarding immigration. Premier Bourassa himself has said that Quebec's de facto distinctiveness should be recognized de jure. But does this recognition require a wholesale reconstruction of the Constitution? Does the ordinary Quebecer sleep uneasily because Mr. Bourassa has not centralized in Quebec City the laundry list of governmental powers in the Allaire Report? I don't believe it.

This brings me to sovereignty and independence. Here we are entitled to ask, once again, exactly what does Quebec want? Sovereignty association is an attempt to have it both ways. What must be understood is that we are talking about independence. Sovereignty, if it is more than a slogan, must mean independence.

Premier Bourassa has gone well beyond demands for shuffling bureaucratic control from Ottawa to Quebec City. Quebec Liberals want control over such a long list of powers that theirs is no longer a claim for expanded provincial powers, but a claim of a different order of magnitude; in truth, it is a call for independence. For the proposals in the Allaire Report will never be accepted by English Canada.

Quebecers should now call their political establishment to account, just as we did in English Canada. In English Canada we have a healthy skepticism of our politicians. It may be that Quebecers regard their political leaders as charismatic figures, and their slogans as talismans of Quebec's destiny. But I doubt it. I think Quebecers want to know what independence is all about. For Quebec it must be a moment of truth, unobscured by soothing sounds from English Canada about accommodating Quebec in some absurdist confederal state.

Quebecers should now require their politicians to explain the meaning of the rhetoric that, with the complicity of the Prime Minister and the leaders of Canada's other national parties, pervaded discussion of Meech Lake. Quebec's political establishment must flesh out what independence means.

Premier Bourassa has said that, whatever happens, Canada and Quebec must have a common currency, central bank, and customs union. And a common Parliament. Mr. Parizeau disagrees; he rejects a common Parliament. But he says an independent Quebec will continue to use the Canadian dollar as its unit of currency, that there must be a joint central bank and a customs union.

At the end of the day every spokesman for independence, when pressed, wishes to retain the Canadian dollar, to have a joint central bank, and a customs union. On these fundamental economic questions, Mr. Parizeau fudges the true meaning of independence as much as Mr. Bourassa does.

We rejected Meech Lake because it impaired the powers of our central government. Why would we now go farther than Meech did? An independent Quebec would be truly independent. But so would Canada. Why would we agree that control of our central bank and our currency, of fiscal and monetary policy, should be shared with another country?

An independent Quebec would have to choose: true independence, its own currency, and its own central bank. If it wished to retain the Canadian dollar as its unit of currency, it would have no control over its own fiscal and monetary policy, certainly less influence over fiscal and monetary policy than it does now. This would be the shadow of sovereignty, not the substance. Yet this question, like so many others, has been avoided by independantistes.

Is Quebec's political establishment prepared to acknowledge that independence can only be achieved after protracted negotiations? Will they disclose to Quebecers that there can be no separation without tears? And will they tell them that independence means independence, not some confederal contraption devised by the same convocation of politicians and bureaucrats that came up with Meech Lake?

Is independence simply a vehicle to enable Quebec's politicians to hold the same offices as they do now, but with more expansive titles? Or do they believe in true independence? If so, they should have the courage to say so. Or are Quebec's political leaders, and its political establishment, as empty-headed as English-speaking Canada's proved to be?

When East Germany decided to join West Germany, what was the sine qua non of union? A common currency. The same central bank. A customs union. But this is precisely what Quebec's leadership insists an independent Quebec must have, after independence. I know, I know, the two Germanys had a common language, English-speaking Canada and Quebec do not. But this reveals the true issue - how to protect the French language.

Quebecers will no doubt think hard about any scheme hatched by their political establishment. Parades and demonstrations are all very well, but what, in terms of new political and economic arrangements, does independence mean? Where lies the true expression of linguistic and cultural solidarity?

Does Quebec really want to be a nation-state, an independent country in a continent dominated by the U.S. monolith? What chance would Quebec have as a French-speaking redoubt, more and more inward-looking? Given the present birthrate of French-speaking Quebecers, an independent Quebec would have to be a fortress Quebec, with ever more stringent restrictions on the use of English. If Quebecers get a good look at independence, they may well re-examine the Canadian option, for the survival of their language and culture is better assured within Canada than without.

An independent Quebec would be leaving behind the sizeable French-speaking populations of Acadia and eastern Ontario. And what of the minorities within Quebec? Even if Quebec were to achieve independence, she would at once be faced with the very questions that now confront Canadians: the rights of a great linguistic minority with a right to be considered a founding people, the claims of the aboriginal peoples, and the place in the new state of a multitude of ethnic and racial minorities.

Quebec must sooner or later have its rendezvous with independence. And it is a mark of respect for that right of choice to permit it to be made without English Canadians wringing their hands over the fact that the choice is being considered. There is no need for us to be fussing over them, coming up with half-baked constitutional proposals designed to postpone that moment of choice. And it is wrong for the Prime Minister or any of our leaders to offer to build constitutional half-way houses in which English Canada, if it is to survive, with or without Quebec, can not agree to take up residence. English Canada must take independence seriously. But so must Quebecers.

Suppose Quebec opts for independence. By that I mean true independence. For Quebecers and Canada's political leaders must understand that English Canadians will not countenance the dismantling of the federal institutions and federal programs that we have built over the past century.

So what will happen? I think English Canada will stay together. Of course the departure of Quebec will be an enormous loss. But the idea of two peoples, two linguistic communities will survive -the Acadians and the French-speaking population of Ontario, together with other French language minorities, will have a claim on Canada's traditions of bilingualism. The Constitution and the Charter will still be there to protect them. The idiotic idea that the Charter enshrines English Canada's individualist notions of our polity, but not collectivities, and that Quebec rejects the Charter on that ground, could only occur to anyone who has never read the Charter. It protects both. And not only by express acknowledgment of the rights of linguistic minorities, aboriginal and treaty rights, and our multicultural heritage. In fact, it was the notwithstanding clause of the Charter that allowed Mr. Bourassa to enact his sign law despite the ruling of the Supreme Court that it was unconstitutional.

With Quebec gone, will Canada be a Pakistan of North America, with the Maritimes inevitably breaking away, as Bangladesh did from Pakistan? Such comparisons are trivial. A better one would be the United States, which is a Pakistan of North America: it has 48 contiguous states, and Alaska, with Canada's land mass in between (not to mention Hawaii). Alaska shows no sign of leaving the Union because of the distance it lies from the lower 48. I lived in Alaska for two years in the mid-1980s. Alaskans, like Canadians, believe they have good reasons to remain where and as they are.

For, in the midst of the despondency that afflicts our political establishment, let me bring you the good news about Canada. Look around the world. Is there another country where you would prefer to live? Haven't we, here in the snow and scenery, built a nation-state worth preserving? We in Canada believe in a public sector that helps to knit the country together through transportation and communications, linking the vast spaces of the country. We have our network of social programs, the centrepiece of which is medicare. We have our national institutions, such as the CBC, designed to keep our country together. These are not just artifacts. Behind each there is an idea, the idea that there must be a government of all Canadians and federal institutions to serve all Canadians. We have avoided the extremes of wealth and poverty that disfigure U.S. society. We believe in government intervention to assuage the condition of the weak and to ensure Canadians everywhere a decent standard of living. We have even provided for it in the Constitution. Under the Constitution Act, 1982 the Parliament and the provinces are committed to promoting equal opportunities for the well being of Canadians, furthering economic development to reduce disparity in opportunities, and providing essential public services of reasonable quality to all Canadians.

We are the kinder, gentler nation that George Bush spoke of in 1988. "Peace, order and good government" is a phrase of which we should not be ashamed. It has spared us the lawlessness that is the hallmark of life in the United States. In our own time Canada has become a haven for people from all over the world; we have the highest proportion of refugees per capita of any country in the world.

It is said that this is not enough, that there must be an overarching national ideal, arising from a stirring encounter in our history. But this is exactly what we do not have. And we are better off without it. We have been able to do without mindless patriotism. We are not ruled by any triumphant ideology. We could be the nation-state of the 21st century, in which the citizen's own identity does not have to be authenticated by a spurious nationalism.

Many of these features of our national life would have been altered by Meech Lake, and they are still at risk. But this is not all that is in jeopardy. A deal cobbled together to keep Quebec in will undermine our federal institutions, threaten the capacity of the federal gov-

ernment to protect minorities, and certainly make it impossible to settle outstanding questions of aboriginal land claims and aboriginal self-government. We cannot throw everything we have built over the side simply to keep Quebec on board.

I suppose it will be said that I am anti-Quebec. I am not anti-Quebec or indifferent to Quebec's aims. I opposed the denial of Quebec's veto in 1981*. I favour continuation of Quebec's special status. I am in favour of Quebec's right to independence. I think that an independent Quebec would be entitled to insist upon its present boundaries.

But I want to ensure that, whatever happens, the principles of Canadian federalism remain intact.

If Quebec votes against independence in a referendum, where would that leave Quebecers? Well, they would still enjoy special status. Pierre Trudeau rejected the idea of special status for Quebec. But Quebec has rightly had special status since 1774. To pretend that Quebec is juristically a province like the others is a barren notion, putting constitutional form ahead of historical substance. Mr. Mulroney believes not in special status for Quebec, but in special status for all the provinces - a decentralized idea of Canada not shared outside Quebec. This is what led to the constitutional debacle of June, 1990.

I want to see Canada survive, with Quebec. Staying together is important not only to ourselves. If people of differing languages, cultures, races, and religions can live together harmoniously within a great federal state, perhaps they may learn to live together harmoniously in the wider world. In Canada we have democratic institutions, the rule of law, an educated populace. If we can't find a way to live together, what peoples, what nations can? Quebec, like English Canada, has a stake in the survival of these ideas in the world.

I think the people of our country, including Quebec, will decide that the Canadian adventure should not be ended. There should be special status for Quebec, but not a constitution turned inside out simply to keep Quebec in. And as Quebecers make their choice - independence or no - they should not think that they can turn away from Canada and yet remain within it.

There is no foregone conclusion to our constitutional journey. Quebecers have the right to choose; I hope that they choose Canada, but whether they do or not, we want to preserve the idea of Canada and the institutions that have brought us this far.

*In an article I wrote for the Globe and Mail in November, 1981, I urged the restoration of aboriginal and treaty rights to the draft Constitution to be submitted to Westminster. This act of lese-majeste led to my departure from the bench. In the same article I also urged the restoration of Quebec's veto.

"The Course of True Love Never Did Run Smooth"

A Midsummer Night's Dream

By R.M. Burns

The Nature of the Question

Nothing we may think or say can disguise the fact that the future of Canada as a nation is unsure at this time. But there is reason to hope that the future can be in our own hands if we have the determination to take it.

There is a tendency on the part of most of us to assume that the problems we now face are unique to this day and age. Nowhere does this seem more so than with respect to matters of our Constitutional life. Canada has not been alone in the state of flux, of greater or lesser intensity, which has influenced much of the course of its history. The history of most federations has been one of some degree of intermittent turmoil and uncertainty. We have not been alone in our movements toward political disintegration, movements that at times have extended in this Province itself, as in the example of a movement in Vancouver Island for separation from the Mainland, something that still is not without some support.

But having said that, we cannot assume that because we share a problem with others elsewhere and with other times, that the question can therefore be easily brushed aside; that it is merely a minor irritation which if left alone will eventually quietly go away.

The test of our right to nationhood lies in our ability to determine where our problems lie and in our competence and our determination to solve them. To a large extent they are economic, philosophical, geographic and linguistic. Put together, they all become essentially of a political nature. We have been fortunate that we have been spared the soul-rending disputes of religious differences such as have destroyed the life of so much of Northern Ireland and parts of the Middle East. Our skirmishes of Catholic-Protestant differences are of utmost insignificance in comparison.

Prime Minister Mackenzie King once said that while some countries have suffered from too much history, Canada suffers from too much geography. And yet, while accepting the truth of the problems created by our vast and varying areas, in many ways it has been in the conquering of the difficulties of geography that many of our greatest triumphs lie. Thus, while its product, regionalism, has been an important element of our economic and philosophical problems, it has been a contributing factor rather than a prime one. All these tend to meld in forming the political situation that must be resolved.

What may be most vital of all is that in our search for solutions we do not commit the cardinal sin of "throwing the baby out with the bath water" as we attempt to adjust the present and the past.

Canada has offered a great deal to most of us - not always what we may have wished for - but nevertheless a life that most people in other countries of the world regard with unmixed envy.

It is unfortunate that our educationalists have not given more thought to the questions we now face. The level of understanding of those upon whom our future now depends is woefully inadequate. But we now have the spectacle, as in the Citizens' Forum, of those who are often the least qualified, being expected to answer the complex questions to which our constitutional dispute gave rise.

The State of Federalism

Federalism is an intricate form of governmental organization, rarely fully understood even by those who would practise it. In Canada, we have from time to time wavered

back and forth between the loose bonds of confederalism, where the regional powers predominate, to the close ties of the true federal state which the Fathers of Confederation created in 1867. They placed most important powers with the central government and in doing this were fortunate enough to enjoy the support of regional politicians both French and English-speaking, who saw that in this approach lay the main hope for the nation they were so boldly creating.

The intentions of the Fathers were soon breached as the regional ambitions developed to weaken the central fabric of government. But the realities of political existence became apparent as economic and international political demands underlined the need for strong central authority. Over our history the centre of gravity has moved from the centre to the periphery and back depending on the circumstances of the time.

In time of war this was recognized as inevitable, as only the national authority was legally and economically competent to carry on under such conditions. But what we tend to forget is that in times of economic distress, at one time or another, every province, with the possible exception of Ontario, has been dependent on the central power for its financial survival.

But it has not been merely in time of economic failure that the importance of a strong central power has been recognized. Even in times of high prosperity, some parts of Canada (the Atlantic Provinces, Manitoba, Saskatchewan and Quebec), have all been recipients of federal aid. More than this, much of the social structure of which we are so proud (if not always so grateful) has relied often on federal initiatives and on massive financial support.

Linguistic differences (French and English) have always formed part of the historical scene. But it has only been in the last few years that tolerance seems to have gone further astray. Tragically enough, this seems to have been related to the very movement which has tried so hard to make Canada a bilingual country for public operative purposes at least. Historically, language and religion have been related and our early distinctions in education were those of faith, not of language. History here, as in Belgium, would seem to offer little hope for cure in the law. Only in greater public tolerance and understanding on all sides is relief likely to be found.

The Growth of Regionalism

What we have experienced in the last few years has been a growth of the movement toward provincial power, by no means limited to Quebec. This would, if carried further, as it now appears to be, convert Canada into a country where the central government was merely an agent of the provinces with limited authority of its own - in short a form of weak confederacy.

This determination has been carried to the extreme in the report of the Allaire Commission in Quebec. The report is of such an extreme and nationalistic nature as to make a farce of any national government that put its proposals in place. If (as I suspect) the report was not designed as a working document, but as a political ploy and as a negotiating instrument, those responsible have seriously retarded the search for an equitable solution. One can have a greater respect for the forthright separatism of Mr. Parizeau than for the double shuffle of Mr. Bourassa. At least Mr. Parizeau says what he wants, distasteful as his views may be to most English-speaking Canadians and to a great many French-speaking Canadians as well.

Possible Alternatives to the Federal Form

The Fathers of Confederation certainly in the wisdom of their time turned to a tight form of union with strong central dominance. If Sir John A. Macdonald had had his way, a unitary state might well have been the result. But even the most centrally-minded would have to

admit that a unitary government would now have had limited prospects of survival, except in time of emergency. Canada has too many regional divisions to make this possible.

On the other hand, the solution of a loose confederacy seems to have even less to offer if we are to have any ambitions to be taken seriously as a nation. The ultimate result of such an approach would likely be an accelerated deterioration into a collection of "Balkan States" with a further movement to ultimate dissolution.

There is little in our experience that would indicate that there are better and easier answers than the federal form. True enough, we have seen a continual flow of squabbling between the provinces and the national government and often among the provinces themselves. But in the long run much has been accomplished. The question remains, however, whether what we have can be made more appropriate to the conditions we now face.

Search for Solution

So in the great Canadian tradition we must seek an acceptable compromise. Experience in the past has shown that with good-will at both the centre and on the periphery this can be achieved. Under the tax agreements of the war and post-war years we found that, given sufficient incentive and with a sense of national identity, workable solutions have not been beyond us.

What then now stands in our way of finding a way out of the mess in which we now find ourselves? In one important aspect of this problem we find that the growth of regional interests has become a greater barrier to any acceptable solution. Where once provincial governments and their electors were prepared largely to accept responsibility for their own shortcomings, now it is the course, more than ever in the past, to lay the blame on the federal system.

To this we must add the greatest regional barrier of all - the growth of the extreme of separation - in the Province of Quebec. It is not that divisiveness has been unknown in the past. There have been several instances where it has seemed as serious as it does today - the conscription crisis of 1917 and the F.L.Q. crimes of 1970 - are but two cases in point. But in the past the adhesive of self-interest as part of Canada has been strong enough to overcome any attempts at national destruction. The referendum of 1980 which was to be the vehicle of advance of the separatist cause, showed us how strong the glue really was.

If the glue was that strong why are things now coming apart? Where we have failed is in not recognizing that political loyalties which involve both emotional and practical issues are a "sometime thing". When Quebec rejected separatism in the 1980 referendum, English-speaking Canada felt that the cause was won, even though it was only one battle. Instead of consolidating our national position by making adjustments which at that time could have been of minimal disruption, we went even further by allowing Quebec to shut itself out of the process of constitutional change. So we have let matters deteriorate to the state where relatively minor irritations have been allowed to develop into principles and the forces of dissolution given a platform on which to stand.

An Attempt at Solution

But even that was better than the solution to which we turned. Here the cure was less acceptable than the disease. The Meech Lake Accord was a well-meant effort to bring back Quebec into the constitutional process but at a price that a majority of the people of Canada outside Quebec apparently were not willing to pay. The sad part of it all is that the whole exercise was not really necessary. The accord was reached without any real appreciation of what its effects might be or how it would be seen by the people of Canada both in and outside of Quebec. What many, especially in English-speaking Canada, saw it as doing was destroying the whole fabric of the Canadian

federation by radically increasing the power of all provinces in the process of mollifying Quebec. It was seen as a capitulation for political reasons, but there was more to it than that. It was an attempt to apply the machinery of executive action to the solution of a problem of enormous complexities without any of the background or the public understanding of what was involved. Some action was undoubtedly going to be required but there was no sudden emergency. What was needed was a careful examination of the long-term needs rather than an effort to produce a "rabbit out of the hat". Certainly it was desirable that Quebec should re-enter the constitutional process, but we have struggled along in the past with such pragmatic adjustments as the situation demanded without stirring the pot so that it came to the boil. What did not seem to be either widely understood or even thought of, was the possible results if the whole exercise failed. That is where we find ourselves today, for the failure has been seen (and encouraged) in Quebec as a rejection of its role in Canada by the English-speaking community in the other provinces.

Meeting Quebec's Needs

There have been many attempts at meeting the needs (and wants) of Quebec within the federation. In the minds of some this has meant overly generous financial rewards. To some, as in the case of bilingualism, it has meant an unjust imposition of the French language in other parts of Canada and this view has not been weakened by the narrowing Quebec attitude to the use of the English language in that province. The concept of 'two nations' in which Quebec would enjoy special powers, was once seriously considered both by the Progressive-Conservative Party, and by the N.D.P. But in the words of the late Eugene Forsey, it was a 'horse that wouldn't run'. To most English-speaking Canadians, the dictum of Prime Minister St. Laurent was the fundamental truth - Quebec was a province like the others. And while this was true in many respects, and many in Quebec accepted it as being so, in more recent years it has been increasingly suspect. Quebec in many important respects is distinct and it may very well be that our efforts to meet this distinction have had serious short-comings.

Given all this it is really no wonder that we have failed to reach a mutually acceptable accommodation. There are too many valid reasons why this has been difficult. When we add as well, the attractiveness of separation for the personal ambitions of many Quebec politicians, academics, unionists, and businessmen, the dilemma becomes readily clear.

English-Speaking Canada a Monolithic Whole

If the view held in Quebec by those who should know better were true - that English-speaking Canada is a monolithic whole - the situation might be more easily explained. What we would then have to do would be to adjust the needs and demands of two opposing constituencies. But unfortunately this is not the case. While the English-speaking provinces are more like each other than they are like Quebec, there are distinct differences each from the other. One is never in doubt as to where one is, be it in one or another of the Atlantic Provinces; one or another of the Prairie Provinces; Ontario or British Columbia. Each has its own needs and wants and the ambitions of its own people and its politicians to satisfy. Regionalism is not, of course, unique to Canada. Even a compact unitary state like England has its local distinctions. But in such a more evenly balanced political entity it is no more than a constant irritant which can be dealt with in pragmatic terms. In Canada it threatens the very nature of our continuing existence.

The Influence of Personalities

But something besides regionalism has played an important part in the decline of Canadian nationality. Principles and prac-

tices, while important in themselves, are of little effect unless there is the will and the capacity on the part of those responsible to make use of them. We have been fortunate since Confederation in the number of political men who have had convictions of Canadian nationalism and have been prepared to stake their political lives on it. From Sir John A. Macdonald to Pierre Trudeau, there have been any number of political leaders who have made Canada's existence a reality. At no time in fact have we had a national leader who has based his career on the failure of the original dream.

Without the provinces nothing could have been accomplished and we have at many times in our history been well served by provincial leaders who could see beyond the boundaries of their own jurisdictions. There were, of course, those of a narrower viewpoint, but except in rare cases they were never able to exert the influence that endangered the broader view. In Quebec, while nationalistic tendencies often were influential, no Premier from Confederation on has been able to persuade his electors of the inequity of the federal link. That this may be changing has yet to be determined.

Unfortunately, this provincial attitude has in many cases been weakened by opportunistic values. "Ottawa bashing" has become a basic part of provincial politics no matter what party is in power. The rise of regional parties has usually been based on specific regional policies as opposed to the aims of a broader national interest. Fortunately for Canada, such parties have had a short life and over time either disappeared quietly or have been absorbed into the national political structure of major parties.

Whether as things are we can expect to have similar results in the future is open to serious question. Provinces are increasingly strident in their demands for recognition. The blanket of federal power no longer seems enough despite its wide coverage. While in the past economic and military crises the federal power was indispensable and welcomed, the federal financial policies of the last twenty years or so gave little reason to believe that the constitution of such federal authority can be depended upon. Despite the trends elsewhere, as in the European Community, there is little evidence in Canada today of a continuing confidence in central support. If things were as they have been in the past and provincial governments could rely on the financial bounty of the central government to continue and increase, many of the pressures toward disintegration which we now face would likely be eased. But the Federal government's financial situation today does not make this a likely event. And in the case of Quebec, the nationalistic fervour is now so strong that it is doubtful that the financial incentives for unity, which have proved so useful in the past, would continue to over-ride philosophical convictions.

The Complexities of Solution

The dilemma that we now face is that, while we may appreciate the problem, our capacity to deal with it has become increasingly limited. On the surface the question is easy enough to state: What kind of a country can be made acceptable to a majority of us in all parts of Canada? But like most over-simplifications in itself it is rather meaningless for it is of too many facets and the nuances are too numerous to be dealt with in any simple form. If it is difficult to clearly state the questions, how are we to arrive at coherent answers? This is far more complex. It is really not one answer that we require but a number of answers to a number of difficult questions which all must be compatible each with the other. It is not a mere matter of settling the differences of position between the executive governments of Canada, Quebec and the other nine provinces and the territories. First there must be an understanding among the people of Canada on a nation-wide basis as to what they may expect and what they will accept, in order that we may have a united country reasonably founded on self-respect and mutual understanding.

The Path to Success

How is this elusive goal to be reached? First of all there must be some common ground of what we expect this country to be and what we want it to achieve. There must be some strongly based foundation of pride in Canadian nationality. This we have enjoyed in greater or lesser degree for most years of our history. But at the present time in these 'winters of our discontent' such does not exist either between the national government and the provinces or within the provinces themselves. We all know in our hearts what we expect from our country but there is limited agreement on what this is and even less on how we are to proceed and how we are prepared to meet the inevitable costs. All this will not come by a spontaneous combustion but will require the catalysts of an understanding of the seriousness of our predicament and a realization of the cost of the alternative of dissolution. Nor will it come about without the leadership at all levels of government which has been so lacking in the recent past.

The difficulties lie not so much in knowing where we want to go (although that is an essential starting point) as in developing the means of getting there.

In the first instance, such an answer depends on a political maturity and understanding on the part of our representatives. This must be supported by public opinion in general and both these seem somewhat lacking at the present time. With the political maturity must go a capacity to place the necessary ingredients within a workable constitutional framework. We know only too well the difficulties we have had, not only with the basic framework itself but with the capacity to make it adjustable to the changing needs of the times. All of this requires a general acceptance of principles, not of unanimity for that in itself is a strait-jacket on the body of political process. But there must be a sufficient scope of public agreement to make the process of change a matter of practical political application.

The Need for Compromise

Involved in this are the difficulties of practical adjustment between the varying interests that must be brought together. Experience tells us that this is not a matter of abstract principle but of developing acceptable compromises which seldom provide the perfect answers but do supply those which will work if given half a chance.

We have made these adjustments in the past, often by financial means. The present structure of interlocking federal and provincial fiscal arrangements is an example of what can be achieved by an approach that has as its goal, not the preservation of jurisdictional power, but the interests of the country and its people. There are costs which sometimes have their contradictory influences on the nature of our political system. But it is in the nature of political systems that, if they are to survive, they must be able to relate such costs to the desired and achievable ends.

Under a Democratic System

To reach our ultimate objectives we must have some appreciation of what our democratic system provides. Basically, we operate under a system of representative government. We elect representatives who we expect to act for us to the best of their collective abilities, to operate not merely as a mouth-piece of some unidentified public will but as people who, taking into consideration the mood of the populace, will exercise to the best of their judgement, how and when this nebulous public will should be reflected in the way the country is run. Admittedly the capacity of the representatives often leaves something to be desired, but it is the best we have and their choice is in our hands.

In the complex society in which we operate, detailed conduct of the public sector cannot be left to a general expression of public wants. For this reason, among others, the present infatuation with referenda and plebiscites seem to offer little hope for any workable

solution. In operation a referendum or plebiscite is useful only to provide a positive or negative answer to a direct and simply expressed question. It is of no value in providing complicated alternatives and in the process of trying to do so often is subject to manipulation through the form of the question put. Unless it is made legally binding (which is even more dangerous) a referendum is merely an expression of opinion without binding authority. All it can do is to provide a background of nebulous opinion on which the elected representatives can devise policy. This can be an important contribution in ideal circumstances but generally it is of limited direct value. The ultimate decisions must lie with the elected bodies. This process has limitations of time and delay but this can often be a small price to pay for ill-informed or precipitous action.

Alternative Methods

But if the referendum or plebiscite does not provide us with the whole answer, how are we to proceed? One method which has had useful application, particularly in the bringing together of independent states, (Australia and the United States, for example), has been the constitutional convention. In this approach, a number of delegates are selected (ideally from both the community at large and from the available expert opinion; much will depend on the wisdom of the selection) which will then come forward after due study with detailed proposals for subsequent courses of action by the elected bodies. The advantages that this process has over general 'town meetings' of the kind currently being staged by the Citizens' Forum are in the more practical questions that are likely to be dealt with rather than the more nebulous catalogue of likes and dislikes which populist approaches seem to produce.

An alternative which does not seem to have had serious consideration in the present flurry of populist sentiment is that of the Royal Commission. Our experience with that has been mixed but in the constitutional field the Royal Commission on Dominion-Provincial Relations (The Rowell-Sirois Commission, 1937-40) lends a good deal of support to that method. It provided us with the most extensive examination of constitutional positions that has been available to us. In the complicated area of political reform the advice and opinion of the best minds of the country, after detailed examination of all available sources, cannot help but be of great value and should not be ignored.

It would seem reasonable to think that with such guidance a conference of the executive and legislative branches of Canada and the Provinces would be usefully equipped to deal with Canada's future. In this way, there would be opportunity for the informed public to be heard and for the rest of us to be informed. If thought desirable ultimate confirmation could be obtained or rejected by a national referendum. It may be argued that the weakness in this approach lies in the questionable abilities of elected representatives to deal with such a difficult question. Surely that can be said of any public decisions and the cure is available to us without tearing the country asunder.

Before we dash blindly into the destruction of our country, we would do well to see just what the costs may be, either in the case of our failure or our success, in developing a new approach to Canadian federalism.

From what is only too apparent from the activities in Quebec, failure to develop an acceptable alternative to our present system can only lead to ultimate disintegration. Not only would Canada lose Quebec, an important element of its national history, but we would have no assurance that the rot would not spread. Ultimately, Canada would cease to be. The alternatives of a number of fragile Balkan-like states or of an additional number of states of the United States, presents a formidable choice which few of us would want to make.

But if we are fortunate (and wise) enough to develop an alternative form of union which

is acceptable to a majority, we would have to step carefully to be sure that what we develop is not merely a prelude to another era of dispute. It does not seem rational to expect that a loosely formed confederacy with a national government of little power and limited effect will be a continuing answer in an increasingly complex world.

Prospects of Change

But despite the difficulties, substantial changes in our relationships can be made. Some transfers of powers and responsibilities should be possible, if not always desirable. Much that has been established under federal initiative and support is now part of the accepted fabric of public activity and will be maintained if that is the public desire even if in weakened form, regardless of where the responsibility lies. The problem will lie in the choices that have to be made and in the extent to which a lack of national consistency can be accepted. It may be that we will have to accept a constitution in which all provinces are not required to be of equal status. Undoubtedly we will have to accept a need for greater flexibility. Unanimity, except in rare cases, would likely be fatal.

None of this is going to be easy. It will take expert knowledge and a greater public understanding and political dedication (especially in Quebec) to make a new Canada a living reality. Nothing that is proposed is likely to be acceptable to everyone in totality. But nothing will be achieved regardless of these efforts without good-will and compromise. There must be a desire to retain as much as possible of what has served us so well in the past century and a quarter of our history.

Before we come to regret our actions when it is too late, perhaps we should stand still for awhile and think of what we may be doing before, like Leacock's horseman, we mount and dash madly off in all directions.

With Our Nation In Peril, What Should British Columbians Do?

By Robert M. Clark

Canada, a country many of us love and cherish, is in peril. In Western Canada there is a widespread lack of understanding or caring about the concerns of French speaking residents of Quebec. In that province many French speaking people are so absorbed in the problems of Quebec that they care very little about what Canadians in the rest of the country are feeling.

Pervasive cynicism about the leaders of political parties at the federal and provincial level is a cancerous attitude. It multiplies the difficulties these men and women face in trying to contribute constructive ideas.

In this essay I propose to seek answers to four questions, and to make specific recommendations.

I What do we as Canadians have for which to be thankful?

II What are the concerns of most people in Quebec regarding federal-provincial relations?

III What are the concerns of most people in British Columbia regarding federal-provincial relations?

IV What do we in this province want most in federal provincial relations?

Brief analytical comments are provided. The answers reflect my personal opinions. I hope they will appeal to a wide variety of people.

I. What Do We As Canadians Have For Which To Be Thankful?

Among the many things I appreciate are the following.

1. The high degree of religious, economic and political freedom for Canadians.
2. From an international perspective, most Canadians are among the most fortunate people in the world in terms of our natural and human resources, and consequently in our living standards.
3. Our spacious geography, as a nation, stretching from the border with the United States to the Arctic Ocean, and from the Atlantic to the Pacific.
4. The tangible and intangible benefits of having been and still being a part of the British Commonwealth of Nations.
5. Our form of government - a constitutional monarchy, with a federal government and provincial governments based on parliamentary traditions.
6. The fact that we have had national programs for four decades or more in Unemployment Insurance, Family Allowances and Old Age Security, and that there are no barriers to mobility of people receiving them anywhere in Canada.
7. The fact that we have jointly financed federal-provincial programs in health services, post secondary education and social welfare.
8. The fact that we have federal unconditional equalization grants to help provide services to people in provinces with relatively low revenue raising capacity.

II. What Are The Concerns Of Most People In Quebec Regarding Federal-Provincial Relations?

Many French speaking Canadians in Quebec feel that their language and culture are threatened. Quebec, with a population of less than 7 million, is neighbour to about 270 million Americans and other Canadians, the overwhelming majority of whom have English as

their mother tongue. The influence of the English language programs on radio and television is enormous in Quebec, just as it is in the rest of Canada.

These concerns in Quebec have been increased by demographic factors, especially in the last three decades. In 1950 Quebec had a larger population than that of the four Western provinces. By 1990 this situation had reversed. Quebec's population had declined from 28.9 per cent to 25.4 per cent of Canada's population. Over this period the population of the Western provinces had risen from 26.6 to 28.9 per cent of the nation's population.

There are three important demographic reasons which largely explain this relative decline in the population of Quebec.

(i) For almost the last two decades in Quebec and in the rest of Canada, total fertility rates - the number of live babies born to mothers age 15-49 - have been less than 2,100 per thousand. This is the rate necessary to prevent the population from actually declining in the 21st century, apart from changes in net immigration and death rates.

Statistics Canada provided the following data on fertility rates per 1,000 women age 15-49.

	Quebec	Ontario	B.C.	Canada
1960	3,764	3,793	3,941	3,895
1988	1,489	1,699	1,755	1,692

To counter this trend, the Quebec Government since 1988 has offered parents bonuses for newborn babies in addition to provincial family allowances which supplement federal family allowances. This apparently has had a perceptible effect in increasing fertility rates in Quebec.

(ii) For many years Quebec has attracted a smaller proportion of immigrants to Canada than Quebec's share of total Canadian population. In 1989-90, for example, Quebec was the province of destination for 18.3 per cent of new Canadian immigrants.

(iii) In every year of the last quarter of a century within Canada there was a net migration from Quebec to the rest of Canada. Over the period 1966-67 to 1989-90 this net migration totalled 466 thousand. It has, however, declined from a peak in this period of 46 thousand in 1977-78, to a low of 4 thousand in 1986-87, and 6 thousand in 1989-90.

These facts partly explain why the Quebec Government has been so concerned not only to increase immigration into Quebec, but also to favour immigrants whose first language is French.

During the Quebec Referendum in 1980 on sovereignty-association for Quebec, Prime Minister Trudeau campaigned vigorously on the "No" side. I quote from a lecture on November 27, 1990 at Queen's University by Gordon Robertson, the former Clerk of the Privy Council.

> That there was a promise is beyond doubt - it was by the Prime Minister of Canada and by leaders from English speaking Canada who went to Quebec to appeal to the people there to cast their votes for federalism. A "No" vote on a mandate for the government of Quebec...would be a vote for a "renewed federalism. It is absurd to argue that, in the context of the time, the promise was not meant to be understood as...relevant to the status of Quebec and to its capacity to protect the French language and culture.
>
> The [ensuing federal provincial] negotiations...ended with..."agreement without Quebec". Every government at the 1981 conference except Quebec got some important gain: for the West, the amending procedure it wanted and a new provision on jurisdiction over non-renewable resources; for the Atlantic provinces, a constitutional commitment to the promotion of regional equality and to equalization; for the federal government, the Charter of Rights and Freedoms... Only Quebec, the province that had been promised renewal, got nothing.... It could not possibly be acceptable to any government of Quebec no matter what political party formed it.

The five proposals made by Premier Bourassa in the Meech Lake Accord were, as Gordon Robertson said, "much more moderate than the changes in the constitution sought by previous Quebec Governments...since 1968."

Premier Bourassa asked for four constitutional changes in 1987 which would apply to all provinces.

Quebec made one additional demand which did not apply to the other provinces - the demand to be recognized as a distinct society.

Section 2 of the Meech Lake Accord stated:

1. The Constitution of Canada shall be interpreted in a manner consistent with

(a) the recognition that the existence of French-speaking Canadians, centred in Quebec, but also present elsewhere in Canada, and English-speaking Canadians, concentrated outside Quebec, but also present in Quebec constitutes a fundamental characteristic of Canada; and

(b) the recognition that Quebec constitutes within Canada a distinct society.

2. The role of the Parliament of Canada and the provincial legislatures to preserve the fundamental characteristic of Canada referred to in para. (1)(a) is affirmed.

3. The role of the legislature and Government of Quebec to preserve and promote the distinct identity of Quebec referred to in para. (1)(b) is affirmed.

4. Nothing in this section derogates from the powers, rights or privileges of Parliament or the Government of Canada, or of the legislatures of governments of the provinces, including any powers, rights or privileges relating to language.

On the whole, I strongly favoured accepting this distinct society proposal. I felt then and even more strongly now, that it is a reasonable and essential requirement to be met if we hope to keep Quebec as an integral part of Canada.

As Gordon Robertson said in the lecture from which I quoted:

> In view of most of its leaders of opinion, Quebec has made every reasonable effort to achieve arrangements under which it can find its future within a renewed federalism. They see English-speaking Canada, by its stubborn unwillingness to accept even modest change in the Constitution, as forcing Quebec to abandon its once preferred federal course and to choose another way.

What has happened since the demise of the Meech Lake Accord has been an acceleration of trends in Quebec since the early 1960s. I quote from a brief by Professor Tom Courchene, which he was invited to give to La Commission sur l'avenir politique et constitutionnel du Québec. He is the Director of Policy Studies at Queens' University. For over two decades he has been one of Canada's leading thinkers in the whole area of federal provincial relations.

> As part of the "Quiet Revolution", the best and the brightest of the young Québécois flocked to the civil service. One result was that Quebec came to possess the most professional provincial civil service, which arguably remains true to this day.
>
> Moreover, because of Quebec's opting out policies, its civil service acquired expertise over a range of areas much broader than those of the other provinces.
>
> Business schools rather than law and public administration progressively began to attract young Québécois.
>
> The role of the state in Quebec has not so much been diminished as transformed. L'Etat entrepreneur has given way to l'etat catalyseur. Thus, the essence of Market Nationalism was that the principal avenue by which Quebec would secure its long term economic viability is a dynamic outward-looking private sector owned and controlled by Québécois but aided and abetted by the state.
>
> ...Quebecers now have the confidence in themselves and in their society to recognize that they, and not English Canada, will determine key aspects of their future.

On January 28, 1991 there was published the Report of the Constitution Committee of the Liberal Party of Quebec, commonly

referred to by the name of the committee chairman as the Allaire Report. With few changes it was endorsed by the Liberal convention on March 8-10th.

This report, and its treatment at the Liberal convention constitutes a dramatic surge in support for a vastly increased role for the Quebec Government and a corresponding diminution in the role of the federal Government. The Liberal convention decisively rejected the idea that the Allaire Report was to be construed as merely providing a basis for negotiations with the federal Government. However, in his closing speech of the convention, Premier Bourassa made it clear that he did feel free to use it as a basis for bargaining with the federal Government.

What is in the Allaire Report?

It proposes that exclusive authority be transferred to the Quebec Government in the following 22 areas. This would mean that in these areas the federal Government's spending power will be eliminated.

1. Agriculture
2. Communications
3. Culture
4. Education
5. Energy
6. Environment
7. Family policy
8. Health
9. Housing
10. Income security
11. Industry and commerce
12. Language
13. Manpower and formation
14. Municipal affairs
15. Natural resources
16. Public security
17. Recreation and sports
18. Regional development
19. Research and development
20. Social affairs
21. Tourism
22. Unemployment insurance

The Committee does not elaborate on what is meant by each of these 22 functions. What, for example, does "Social Affairs" include? My impression from reading the full report is that if all of these proposals were accepted, no residents of Quebec, with the possible exception of Indians and Inuit, would ever receive a cash payment from the federal Government unless they were federal employees or entrepreneurs selling goods or services to this Government. Gone, for example, would be the possibility of receiving Old Age Security, federal Family Allowances or Unemployment Insurance benefits. No more research grants to individuals.

Yet residents in Quebec would still pay taxes, such as the personal income tax to the federal Government, although at much lower rates than at present. Such taxes would be used, for example, to pay for national defence, and to pay remuneration for a substantially reduced federal civil service. People wishing to receive cash payments from government for any justifiable cause would look solely to the Government of Quebec. That, in my judgement is no way to help build loyalty to commonly shared purposes of a nation.

One of the arguments used by the Allaire Committee to justify a massive increase in constitutional powers for the Quebec Government is the following:

> It is becoming increasingly obvious that the Canadian federal state is based on centralizing practices dictated by an inflexible will to standardize public services to the utmost and the pursuit of grand so-called "national" policies.

This Allaire Committee, like successive governments in Quebec for over 25 years, objects to the federal Government using its spending power to influence provincial government spending in fields which under the 1867 Constitution were assigned exclusively to provincial jurisdiction.

The Allaire Committee proposes to restrict

exclusive federal Government authority to the following fields.

1. Currency and common debt
2. Customs and tariffs
3. Defence and territorial security
4. Equalization

This report also proposes:

> The central government's tax base will be revised and its budgetary practices made subject to institutional constraints, including setting targets designed to severely limit its deficits and restrict its taxation powers.

This Committee proposes drastic reductions in both federal taxation and expenditures, but the federal Government would retain full rights to provide equalization grants to eligible provincial governments.

The Committee is modestly silent on the question of whether and to what extent the Quebec Government would still expect under the new constitutional arrangements to receive equalization grants.

The Liberal Convention did modify the Allaire Committee recommendation that the Senate should be abolished, to advocate that it be abolished in its present form. This would leave open the possibility of a newly reformed Senate.

The Allaire Committee Report does, however, say to the rest of Canada that

> ...the history of the people of Quebec is based on a desire to be united with the rest of Canada coupled with a determination to maintain its political and cultural autonomy.

The committee favours free mobility of labour, capital and goods between Quebec and the rest of Canada. It asserts that its proposals:

> ...will open the way to...stronger economic growth....the elimination of program duplication will have tangible effects on the efficient delivery of public services...The new arrangement will promote...increased trade between Québec and Canada.

The Committee concludes:

> The issue of Quebec's future must not only be settled clearly and decisively, but speedily as well...in carrying out this process, we must be aware of the need to maintain good relations with our partners.

The Committee favours holding a referendum in Quebec no later than "before the winter of 1992".

> Should the rest of Canada accept the platform proposed above, the Quebec Liberal Party proposes that the referendum deal with the ratification of the new Québec-Canada pact. Should the rest of Canada reject the platform, the people of Québec will be asked to decide whether or not Québec should become a sovereign state.

III. What Are The Concerns Of Most People In British Columbia Regarding Federal-Provincial Relations?

The demands of people in Western Canada are less clearly articulated than those of people in Quebec.

In the lecture already quoted, Gordon Robertson said:

> The West sees Quebec as the spoiled child of Confederation courted and catered to no matter what party is in power in Ottawa... The heart of any federal government was where most seats in the House of Commons are - in Ontario and Quebec.

The only constitutional reform the West can see to change the balance is a "Triple E Senate" - elected, effective and equal in the number of Senators from every province.

It is widely felt that our House of Commons, based, with minor qualifications, on the principle of representation by population, will inevitably tend to discriminate on many issues against Western Canada. The four Western Provinces plus the Territories have 89 elected Members of Parliament as compared with 75 Members from Quebec, and 99 Members from Ontario. Ever since Confederation Ontario and Quebec have

always had more than 60 per cent of Canada's population. It was, I believe, largely because the four Western Premiers wanted to change this balance of power among the regions of Canada that they agreed to advocate a "Triple E Senate". In a Senate thus constituted, the four Western Provinces would have twice as many Senators as Ontario and Quebec.

There are widespread feelings about what Westerners are against. If public opinion polls are accurate, most of them are against giving major concessions to Quebec. The feeling is that Quebecers are never satisfied. If we make concessions to them in the next couple of years, they'll be back demanding more.

Most Westerners believe that the concerns of Quebec in particular, but also of Ontario, have a much higher priority on the federal political agenda than the concerns of western Canadians, including the aboriginal peoples. This point has been all the more significant in practice because for well over half of the years from 1950 to 1990, the Prime Minster has been elected from a constituency in Quebec.

A different argument, heard in British Columbia and Alberta, as well as in Quebec, is that there is extensive and unnecessary duplication and waste of taxpayers' money because in numerous fields the federal and provincial governments exercise joint jurisdiction. The advocates of this viewpoint invariably assume that in practice these unnecessary expenditures could be eliminated if the federal Government turned over exclusive jurisdiction of many responsibilities to the provincial governments. I am not aware of any significant cases where the argument is being advanced by provincial politicians that unnecessary duplication of services could be eliminated in some areas by turning over total jurisdiction to the federal Government.

For substantial decentralization of powers to work out effectively, the federal Government could and should reduce its share of total tax revenues. This could enable provincial governments to increase their share of total tax revenues without adding significantly to the overall burden on taxpayers.

There are two arguments commonly used for this greater decentralization of responsibilities. One is that provincial governments tend inherently to be closer to their respective electorates, and hence more responsive to their concerns. The second argument is that such decentralization allows for greater variation in programs from one province to another to reflect more closely different priorities of a majority of people in different provinces in Canada.

In some cases, as indicated in my recommendations, I believe these latter two arguments are valid. However, I am convinced that the overall case for a major decentralization of powers is overstated. Consider the following facts.

(i) Canada is already a much more decentralized nation than other countries with comparable forms of government - the United States, the Federal Republic of Germany and Australia.

(ii) Western Canada in recent years and now has more influence in the federal Cabinet than at any time in the post-War years. I have in mind not only the number of Cabinet ministers, but also the significance of the portfolios they hold. For example, British Columbia, for the first time in Canadian history, has four federal Cabinet ministers, as well as the Speaker of the House of Commons.

(iii) Since 1984 federal Government spending has been growing at an appreciably slower rate than provincial government spending. Over the years 1984-85 to 1989-90 total provincial government spending in Canada increased by 37.6 per cent, while federal Government spending rose by 29.8 per cent.

(iv) The following table shows for each province, both in millions of dollars, and in per capital dollars

i) federal equalization grants in 1990-91;

ii) federal equalization grants, plus federal

Established Programs Transfers in health and post secondary education, plus federal Canada Assistance grants for social welfare in 1990-91;

iii) the average annual percentage increase in the three categories in ii) from 1984-85 to 1990-91.

Note in particular the data in column 5. Over the years 1984-85 to 1990-91 the highest average annual per cent increase in total federal transfer payments to the provincial governments went to Saskatchewan - 10.3 per cent and to Manitoba 7.7 per cent. The province with the lowest average rate of increase was Quebec - 3.7 per cent.

It may seem surprising that the average annual rate of increase was greater for Ontario, British Columbia and Alberta, even though these provinces received no equalization revenues from the federal Government. Part of the explanation is that each of these provinces increased in population at a considerably faster rater than Quebec. A less important reason is that in the years 1984-1989 the gross domestic product of Quebec grew at a faster rate than in any other province except Ontario. This reduced Quebec's claims for equalization and Canada Assistance Plan grants.

Total and Per Capita Federal Equalization Grants, and the Sum of Equalization Grants Plus Established Program Transfers for Health and Post Secondary Education, plus Federal Canada Assistance Grants for Social Welfare from 1990-91 and the Average Annual Rate of Increase of All Three From 1984-85 to 1990-91

	Equalization Grants	Equalization Grants Plus Established Programs Transfers Plus Canada Assistance Gants	Equalization Grants	Equalization Grants Plus Established Programs Transfers Plus Canada Assistance Grants	Average Annual Percentage Increase from 1984-85 to 1990-91 (in column 2)
	Millions of Dollars		Per Capita		
	(1)	(2)	(3)	(4)	(5)
Newfoundland	948	1,391	1,655	2,427	7.0
Prince Edward Island	205.7	309	1,577	2,371	6.9
Nova Scotia	927.5	1,691	1,040	1,897	6.2
New Brunswick	919.9	1,536	1,271	2,121	7.0
Quebec	3,865.1	10,161	572	1,503	3.7
Ontario		9,370		963	7.3
Manitoba	888.3	1,840	815	1,689	7.7
Saskatchewan	422.8	1,312	423	1,312	10.3
Alberta		2,413		977	6.0
British Columbia		3,127		999	5.6
Canada	8,177.2	33,237	732	1,251	

Source: The Department of Finance, Ottawa - The Established Programs Transfers includes the value of income tax points transferred to the provincial governments.

IV. What Do We In This Province Want Most In Federal-Provincial Relations?

My feeling is that a substantial majority of people in British Columbia who have carefully considered this question want Canada to remain as one country. However, they are not willing to see federal powers drastically diminished as the Allaire Report proposes. In particular, they do not favour granting concessions to Quebec which are not granted to other provinces.

My own intense preference is to keep on building Canada as one country. But there are limits as to how far I am willing to see us go to achieve this.

The advantages of pursuing this goal of nation building are economic, political, and cultural.

If Quebec becomes a separate nation, both Quebec and the rest of Canada will, I believe, be worse off economically than each otherwise would be. This would be true not only in the short run, but also in the long run.

If Quebec becomes a separate country in 1992, it will have a population of less than 7 million. Canada's population will be reduced to less than 20 million. Nearly 90 per cent of our exports still will be sold to the European Community, with a population in mid 1989 of 326 million, plus the United States, with a population of 249 million, and Japan with a population of 123 million.

Gordon Robertson eloquently describes some of the consequences of such a separation:

> Quite apart from the economic and social damage from separation will be the diminished importance of both parts of what had been Canada internationally and in North America. Both Quebec and the divided Canada would be diminished and insecure. Each would become more dependent on the policies and the favour of the United States. Each would have less stature in international affairs of concern to its people than they have now as mutually reinforcing parts of a successful, respected country. We would have failed in the most inspiring purpose that has been ours - that of creating and maintaining a unique state with two dynamic societies living successfully. We would instead join the list of countries where a narrow nationalism of diminishing relevance stands in the way of the broader relationships that, it is clear, will be the pattern of tomorrow.

I value the distinctive contributions French speaking Canadians make to life in this country. I welcome their rising contributions to the realms of national and international business, and to the well being of Canadians across the country. I appreciate also their animated social life, their ebullient sense of humour, their hospitality, the talents of their musicians and artists. If Quebec becomes a separate country, English speaking Canada will become culturally a poorer nation than it now is.

V. Recommendations

1. People of British Columbia who want the people of Quebec to continue as part of Canada should not just leave it to the political parties of this province to speak to the Governments of Canada and of Quebec. As individuals we should take the initiative by letters and other personal contacts with relatives, friends, business, trade unions, cultural, church and other groups in Quebec. Tell them that they are appreciated. Ask them to remain an integral part of Canada, sharing their values with people in the rest of the country. But also explain your concerns over the massive decentralization of powers from the federal to the Quebec Government. Add your comments about what positively you want the B.C. Government to do.

The more that can be achieved in federal provincial co-operation by delegation of powers in both directions between the two levels of government, the easier it will be to accomplish a transition to a more widely acceptable constitution.

2. Quebec should be recognized in an amended Canadian constitution as a distinct society along the lines proposed in the Meech Lake Accord.

To recognize Quebec in this way does not diminish the status of Canadians in the rest of Canada.

3. The negotiations of a revised Canadian Constitution should not be based on the assumption that every power offered to Quebec should be offered to every other province. The question of which additional powers should be offered to Quebec and which to the other provinces should be considered on their merits.

Behind this recommendation is the recognition that the Quebec Government will continue to face problems in the preservation of the French language and culture which we in the rest of the country do not encounter in the preservation of English.

The Quebec Government should be offered:

4. Exclusive jurisdiction in the language field, providing that the existing constitutional rights of English speaking residents of Quebec are protected, and it is specified that the federal Government would continue to have the right to administer and enforce the federal Official Languages Act; and
5. Enhanced or special but not exclusive jurisdiction with regard to immigration.
6. Culture - a broad realm more than difficult to define - should be a field of shared jurisdiction in which both the federal Parliament and provincial Legislative Assemblies should be given explicit powers.

How much of the cost of providing particular governmental services should be left in the hands of provincial and local governments as compared with the federal Government? In considering this question, most public finance economists in the United States and Canada commonly agree on the following criteria.

The proportion of the cost that should be raised at the provincial and local levels should be relatively large, depending upon the following factors:

i) the greater the extent to which public tastes for the services or goods provided vary from one province to another,

ii) the less the extent to which services provided in one province confer benefits or impose costs upon residents of other provinces and countries,

iii) the less important are economies of scale in providing the services or goods, and

iv) the less important is the objective of encouraging redistribution of income among recipients of the services or goods.

While I am by no means suggesting that these are the only criteria that should be considered, I have taken them into account in arriving at the following recommendations on constitutional changes.

7. The Canadian constitution should be amended to grant exclusive jurisdiction to provincial governments in the fields of housing, natural resources, regional development, and parks.

If this is done, consideration should be given to increasing the amount of the unconditional equalization grants provided by the federal Government.

This recommendation in relation to provincial jurisdiction over natural resources is made on the explicit assumption that the provisions of Section 92A(1),(2) and (4) of the Constitution Act, 1867 continue to be in effect.

The purpose of these provisions is to prevent provincial governments from discriminating in taxation or pricing in the sale of natural resources to other parts of Canada.

Part of what it means to be a nation to most Canadians is to have nation wide minimum standards with fully portable benefits across the entire country. I am opposed to having the federal Government surrender its right to provide Old Age Security benefits or Family Allowances.

One of the values that most Canadians cherish is the provision of a national standard of health services across the nation. The Canada Health Act incorporates five principles. These are accessibility, portability, comprehensiveness, universality and public administration. I believe that these principles will continue to be valid.

8. Apart from recommendations 4 to 7, to offer special or enhanced powers to the Quebec Government, I oppose amendments to the Constitution to grant exclusive jurisdiction in areas recommended by the Allaire Committee to any provincial government. This is of the utmost importance in the whole area of health and income security.

This recommendation includes Unemployment Insurance, which I believe should remain in federal jurisdiction. To transfer this field to provincial jurisdiction would, I believe, reduce the mobility of labour. I regard this as undesirable.

9. The Canadian Constitution should be amended to provide that while the federal Government should continue to exercise authority regarding fish in the oceans, primary responsibility for fresh water fisheries should be transferred to provincial jurisdiction.

10. The Canadian Constitution should not be amended to provide joint jurisdiction for the federal Government and any provincial government in the areas of foreign policy.

11. The Canadian Constitution should be amended to provide joint jurisdiction for the federal Government and any provincial government that wants it in the field of telecommunications.

12. There should be no change in the method of appointing directors of the Bank of Canada, and no diminution of the authority of the federal Government working intimately with the Bank of Canada in the determination of monetary policy.

The Allaire Committee recommendations are tantamount to suggesting that, at least in some circumstances, there should be a different monetary policy in different regions of Canada. Of course, it is essential that the effects of the past, present and prospective monetary policy in each region should be considered in arriving at policy decisions. But given the remarkable mobility of capital, both within Canada and between Canada and other countries, I regard it as a practical necessity to have a uniform monetary policy throughout Canada. For such a policy, the federal Government should continue to be accountable to Parliament.

13. Aboriginal communities should have opportunities to maintain their present status and arrangements with the Department of Indian Affairs or to take responsibility for local or tribal self government, with opportunities to obtain help from a newly created federal aboriginal Advisory Agency.

Whatever choices are made under such a recommendation, my hope is that more rapid progress will be made in the settlement of land claims of aboriginal peoples.

Senate reform is of considerable symbolic importance, especially to many people in Western Canada. I favour continuing to have a Canadian Senate, and believe the case for having a reformed Senate is even greater than it has been in the past. Why?

(1) Most major pieces of legislation are bound to be complicated. Typically an important parliamentary bill has implications for other pieces of legislation. In view of the many competing pressures on the time of members of the House of Commons, some legislation in the post War years has been passed without adequate time being devoted to considering its implications for other relevant federal and provincial statutes.

In the last few decades some of the standing committees of the Senate have made a constructive contribution which usually has been inadequately recognized by the news media.

(2) On the whole, the Senate has not been an effective voice of regional interests. I regard the claims made for the benefits of a Triple E Senate are exaggerated by many of its proponents, partly because I believe that the overwhelming power in enacting legislation will still remain with the federal Cabinet, which will continue to be composed largely of members of the House of Commons. Nevertheless, I share the opinion that a reformed Senate can become effective in considering regional interests.

14. The Senate should be reformed rather than abolished.

The chief criticisms I hear are that most Senators do not adequately represent the people of the region from which they come, and that they are too subservient to party discipline. The substantially greater independence of members of the House of Representatives and of the Senate in the United States is one of the few features of the American federal Government that I regard as clearly superior to ours.

How can constitutional rules help make Senators more independent?

(1) Senators should be elected for a fixed term, and for a longer term than members of the House of Commons.

(2) I agree with Gordon Robertson's statement that:

> Clearly the government should not be subject to a requirement of responsibility to an elected Senate. Responsibility must be to the House of Commons only. If that principle is to...prevail, a government must also not be subject to financial strangulation by the Senate, as it was in Australia.

If this important principle is recognized, then Senators can vote to defeat a government sponsored bill - except on budgetary matters - without precipitating a federal election for members of the House of Commons.

Some advocates of an elected Senate favour having very large Senate constituencies - possibly 1, 2 or 3, depending upon the geographic size of each province or territory.

I prefer smaller Senate constituencies because I attach high importance to conscientious voters being able to get and use the necessary information to choose wisely among competing candidates.

Gordon Robertson quotes a report of the Canada West Foundation in favour of a single transferable voting system.

> The principal advantage of the system is that it allows the voter to fine-tune his own electoral choice. He can decide for himself whether he wants his support to go to a particular party, or only to a specific individual regardless of party affiliation. Even when he decides to support a particular party, he can choose which candidate of that party he prefers. This flexibility on the part of the voter encourages a similar flexibility on the part of the candidate who must now make clear to the voters what he stands for. The Transferable Vote allows the voter to choose, not just one party over another, but one individual over another.

15. Senators should be elected.

16. Senators should be elected for a term of six years, and be eligible for re-election.

17. Senators should be elected by a single transferable voting system in which voters have the opportunity to indicate their priorities by ranking individual candidates.

18. Each province and the two territories should be divided into constituencies in which three Senators are to be elected. The constituencies in each province and in the territories should be roughly equal in terms of population.

19. Senators should be listed on the ballots in alphabetical order, with their status as a supporter of a named political party or as an independent.

20. A short booklet, paid for by the federal Government, should be provided to each eligible voter in Senate elections. This would give biographical information provided by each candidate, and a short state-

ment of her or his chief concerns if elected to the Senate.

Under sections 38(i) and 42(1)(b) and (c) of the Constitution Act, 1982, the consent of the legislative assemblies of at least two thirds of the Provinces with at least 50 per cent of Canada's population is essential to change the number of Senators in any province, the method of selecting Senators, or the functions of the Senate. It is not realistic to expect the Government of Quebec to accept a change that would reduce its percentage of the total number of Senators from 23.5 to slightly less than 10 per cent as would be the case if each province had the same number of Senators. Moreover, it is not necessary to go as far as equal representation by provinces in order to achieve much more equal representation by regions.

I agree with the Special Committee of the Senate and the House of Commons in 1984 and the Royal Commission on the Economic Union and Development Prospects for Canada in 1985 in their recommendation as to the number of Senators for each province.

21. The number of Senators should be:

    24 from each of Ontario and Quebec

    12 from each of Newfoundland, Nova Scotia, New Brunswick, Manitoba, Saskatchewan, Alberta, and British Columbia

    6 from Prince Edward Island

    6 from the Northwest Territories and the Yukon Territory

While it would be difficult to achieve, I believe it would be desirable to include a general formula for changing the number of Senators in each province in the coming decades to reflect major changes in the proportion of the population in each province.

What does it mean to assert that the Senate should be effective? If members of the House of Commons and of the Senate are elected, how are conflicts between them to be resolved? As Canadian history has shown during a few of the years when Sir Robert Borden, MacKenzie King, or Brian Mulroney was the Prime Minister, such conflicts are most likely to occur when the political party which has a majority in the House of Commons does not have a majority in the Senate.

I regard it as essential that an amended Constitution should clearly provide how conflicts between the two Houses of Parliament are to be resolved.

The method in the present Constitution of allowing the Prime Minister, with the consent of the Governor General, to appoint four or eight additional Senators was, in my opinion, appropriate when Senators were appointed. It would cease to be appropriate when the Senators are elected. I believe that the most appropriate way of resolving conflicts is to treat differently subjects in three carefully defined areas - as set out in the following three recommendations.

22. Proposals for raising government revenues, for government spending and for the treatment of government debt should continue to originate only in the House of Commons. On such bills the Senate should have only a suspensive veto for up to a maximum number of days - possibly 60 days.

23. In the areas of language and culture the Senate should have an absolute veto. For a bill to be approved by the Senate in these areas would require an overall majority of all Senators who voted on the bill, and that majority would have to include a majority of francophone Senators.

24. On all other bills than those covered by Recommendations 22 and 23, another procedure should be followed when the House of Commons and the Senate cannot reach agreement within a stipulated time from when the controversial bill has received third reading in the House of Commons. The bill could be put to a vote in a joint session of the two Houses. A simple majority of voters in the combined Houses would be sufficient to pass the bill.

Two further recommendations regarding the Senate are, I believe, appropriate.

25. Members of the Senate should be eligible to be members of the federal Cabinet.

26. With an elected Senate the Speaker of the Senate should be elected by the members of the Senate.

How Are All of These Or Similar Recommendations To Be Achieved?

Consider three facts.

1. There is no provision in the present Constitution for the secession of any province.
2. After the defeat of the Meech Lake Accord, Premier Bourassa publicly declared that he would never negotiate again on constitutional matters with other provincial premiers.
3. Provincial premiers, including Premiers Vander Zalm and Rae have made it clear that they are unwilling to allow the federal Government alone to speak for Canada in negotiations with Quebec.

I see no available low risk strategies for the perilous months ahead. Since I am neither a politician nor an armchair political strategist, it is appropriate to put forward the following ideas very tentatively. Circumstances may change to such an extent that other strategies are more appropriate.

27. (i) The Federal and each provincial and territorial government should continue to analyze what it most wants for all of Canada as one country, as well as what it wants for its own people. Each provincial and territorial government should consider not only what additional powers they would like, but also what provincial powers they would be willing to turn over to the federal government. The federal Government should study comparable issues. Which of such changes are best achieved by constitutional amendments, and which by working within the existing Constitution?

(ii) After extensive private discussions with the governments of the provinces and territories, the Prime Minister, on behalf of the federal Government should announce publicly proposed changes to meet the constitutional concerns of people in all of the provinces and territories, including the aboriginal peoples. This should be done well before a Quebec referendum is held.

(iii) He should invite all of the premiers to attend a public conference where proposed changes would be discussed at sessions open to the news media.

This would not be a negotiating session, but a session for the exchange of ideas. On this understanding, my hope is that Premier Bourassa would be willing to attend. Not only the people of Quebec, but also other Canadians need him to be there.

(iv) The Quebec Government has announced that it will be holding its own referendum within the next twelve months. Hopefully it would be worded in such a way that the rest of Canada could respond in a separate referendum conducted by the federal Government.

(v) The Prime Minister should consider seeking widely for advice in preparing this referendum, and for responding to it. He should consult not only his usual sources, but also the leaders of the Opposition Parties in federal politics. I suggest that he also seek the opinions of premiers and Opposition party leaders in the provinces and territories.

(vi) After receiving the results of this referendum, he should invite all the premiers to a public conference at which he should seek consensus. Such a public conference would, of course, be preceded by extensive private discussions with all the provincial governments.

I am not convinced that a B.C. referendum is desirable before or after a federal referendum is held on constitutional reform in all of Canada except Quebec, in response to the Quebec referendum. My feeling on this has nothing to do with the outcome of the next B.C. election.

I am concerned about the difficulties in wording fairly any referendum used to obtain the opinion of voters on what are inescapably complex constitutional issues. Referenda can be appropriate when voters can draw upon their own personal experience to answer the questions: e.g. Do you favour a continuation of daylight saving time in B.C.? They are much less appropriate when voters are asked to express their opinions on issues in which they have little experience. Almost inevitably the referendum questions oversimplify the issues to be resolved. I prefer having governments follow the parliamentary tradition of taking full direct responsibility for their decisions without being bound by the results of a referendum.

However, I recognize that both the Social Credit and the New Democratic Parties have publicly supported the idea of a B.C. referendum on constitutional reform. The timing of such a referendum is important. I suggest that the most appropriate timing would be after the Quebec referendum and shortly after the referendum to be conducted by the federal Government in all of the country except Quebec. A major reason for this conclusion is that voters in the B.C. referendum would be voting in the knowledge of the results of the referenda in Quebec and in the other regions of Canada.

28. If the B.C. Government holds a referendum on constitutional reform, this should be held after the Quebec referendum and the federal referendum in all parts of Canada excluding Quebec.

I am convinced that if we, the people of Canada, sufficiently care for our fellow Canadians, we can create in one Canada a society that is both more compassionate and more efficient.

Constitutional Reform: a Radical B.C. Perspective

By Tex C. Enemark

Preface

It is said that one eats an elephant one bite at a time. When asked to prepare this paper, my largest problem was to decide on which particular part of the elephant to concentrate because in a short essay on such an important and timely subject as the future of Canada, and B.C.'s role in it, and of the current constitutional debate, only a small part of the elephant could be addressed. I presumed that many others who were asked to contribute to this collection of papers would focus on the issues of division of powers, constitutional amendment, and the role of Quebec, and would tend more to discuss the larger issues in a more academic way. That allowed me to dwell on some thoughts about, first, how the country got to the divided state it has, second, why British Columbia's federal interests are so badly served, third, the inadequacies of two of our inter-related national institutions that have served us badly over the past forty years — our national political parties and the parliamentary system and, finally, to suggest some patterns for change if B.C.is going to be able to find fulfillment in some ongoing future federal relationship with other provinces.

I begin with two givens. The first is that, as of April 1991, public opinion in Quebec has irretrievably abandoned support for any variation of the status quo. While I want to avoid the word "separation" because of its emotive connotations, I accept that the "rest of Canada" will have to make a quite specific, different and broad ranging "treaty" with Quebec that will leave Quebeckers very much "masters of their own house". While this is not inevitable, Canada appears to be bereft of the kind of national leadership, will, and vision necessary to otherwise overcome our present crisis.

The second given is that, to accommodate the first, or even to continue on with Quebec more or less as is, the Parliamentary system is no longer a suitable vehicle to allow for the provinces of English speaking Canada to develop the long term harmonious and constructive relationships needed to continue as a country, irrespective of any re-shuffling of powers between jurisdictions.

I. Why Our Divisions Have Developed

It was recognized in the Confederation Debates that there was an internal contradiction between a federal system of government and the cabinet system of Parliamentary democracy. If a federal system is to work, the adjustments that take place in each of the provinces to individual circumstances must be able to be reflected at the national level. Thus, national policies must be able to be formed with regional political input at the national level and there must be a degree of regional flexibility in national policies; those adjustments and that dialogue can take place only at the cabinet level. This is because two of the basic tenets of Cabinet government in a Parliamentary system are Cabinet solidarity and Cabinet secrecy. The most fundamental and far reaching policies that affect all Canadians are discussed, not broadly and publicly, but narrowly and secretly. Small groups of public servants with supposed expertise analyze and develop — in strictest confidentiality — policy options for Ministerial consideration. While "trial balloons" may be floated and "white" and "green" papers circulated, and the government caucus canvassed, the only important discussion — until the coming of executive federalism and frequent and far ranging first ministers meetings — takes place around the cabinet table.

From the swearing-in of MacDonald's first Cabinet, this was recognized and, what was more important, it was adjusted for by the appointment of key representative spokesmen for the key regional, social, and economic interests. Thus, around the Cabinet table, Ministers were few in number — less than eighteen as late as the 1940's — they had generally strong regional political bases, and they were authoritative to a very substantial degree: when they took a very strong stand on a regional issue they could at least modify an adverse decision if they couldn't have it stopped.

Prime Ministers that followed MacDonald all paid similar careful attention to the delicate nature of regional sensibilities in their Cabinet making and most were always aware of the need constantly to attend to the fragile nature of consent in the Country. For MacKenzie King, it was a life-long obsession, one for which he was frequently criticized.

During this period — to perhaps 1955 — what was the role of Premiers as regional spokesmen on national issues? Mostly, they were of scant importance. The infrequent meetings between the Premiers and the Prime Minister dealt with fundamental issues involving, generally speaking, jurisdiction and finance. But as late as 1955, there would be no question, for instance, as to "who speaks for Saskatchewan?" on a national issue — it was certainly Jimmy Gardiner, the Federal Agriculture Minister; it was certainly not Tommy Douglas, the Premier.

Ask essentially that same question of each province, and with the qualification that Quebec Premiers sometimes played a special role, the answer was the same: federal ministers by-and-large, had departmental autonomy, a national profile, and powerful regional responsibilities and accountabilities. Premiers stuck close to home and to local issues.

Ask the same question today. The federal Cabinet is bloated to forty members. Can anyone in B.C. even name a federal minister from, say, Saskatchewan, let alone the "senior" minister. More to the point, B.C. has four Ministers supposedly representing its interests in Ottawa. I doubt — based on extensive personal enquiry — if five percent of B.C.'s citizens can name all four. And if asked "who speaks for B.C.'s interests in Ottawa" few would suggest it were other than the Premier. The sad fact is that Federal Ministers are seen as speaking for Ottawa in B.C., not the other way around.

Such an attenuation of the power, influence, accountability, and role of federal ministers as regional spokesmen is remarkable, but also reflects the mirror image growth in the national roles played by the Premiers and, one might suppose, this is a fundamental part of the falling apart of our traditional confederation: the centrifugal forces became stronger than the centripetal.

How did this happen? Where anything in human affairs "began" is a difficult question to answer. One might say it began with the crisis of the Great Depression and the recognized need of the Federal Government to expand its role in the area of social welfare. The R.B. Bennett government tried, was challenged in court, and its initiatives failed. The coming of the Second World War brought not only an enormous increase in revenues but a degree of managerial talent to Ottawa which, backed up by the post-war federal initiatives on social policy, and the determination of the St. Laurent government to "nation build" in a multi-faceted way, pushed Ottawa into being the country's pre-eminent political force, with control of about two thirds of public sector expenditures. But the aggressive — some would say arrogant — way which the federal government went about expanding its role through conditional grants and other methods unforeseen at Confederation, and resented by the Provinces, coupled with the aging of the Liberal Party's political apparatus, led to the election of the government of John Diefenbaker in 1957 and 1958.

For six years the country had a government in reaction, a government without an agenda

during a time of both economic recession and massive social change. Six Provinces saw a change of government between '58 and '63: Nova Scotia, New Brunswick, P.E.I., Quebec, Manitoba and Saskatchewan, while Ontario's long lasting Conservatives had a new leader. Only B.C., Newfoundland and Alberta remained politically stable. Thus, during the 1957 -63 period, the Federal government's clearly laid out direction was disturbed, and for two of those years there were minority governments. While Ottawa lost its sense of momentum the new provincial governments brought new commitments to Province - building, and new approaches to intergovernmental affairs. For the first time, for instance, Premiers began to meet among themselves, regionally and nationally, to discuss common problems and common approaches to the encroachment of the Federal Government. And Quebec began its "quiet revolution". When the Liberals returned to power — with a minority government — in 1963 all the long standing rules of Government and politics in Canada with respect to the regions were to be broken, but we would not understand the nature of this until it culminated in the failure of the Meech Lake accord twenty seven years later.

You see, while everyone naturally expected the massive 1958 Conservative victory to result in Conservative Party pre-eminence for a decade, only two years later — by 1960 — it was becoming clear to some that the Diefenbaker government lacked internal cohesion and might well be reduced at least to minority status in 1962. This became crystal clear with the mishandling of the dispute between the Government and the Governor of the Bank of Canada in the spring of 1961, and the abandonment of the government by the Conservative Party's traditional supporters in the business community.

The Liberal Party made two strategic responses to this premature and unexpected opportunity, each of which were to lead, very directly, to our current situation. The first was a significant shift to the political left both in areas of social policy and government intervention in the economy without considering the constitutional means of implementing those policies. The second was to focus on urban Central Canada almost exclusively in its political rebuilding efforts. This would lead to "two Canadas" different from the traditional "two Canadas" —English and French. Those regions where Liberals won seats in the 1963 - 1984 period had power and influence around the Cabinet table. Those regions which did not elect Liberals had no such power. Thus, "Inner Canada" and "Outer Canada" emerged as emotional and political realities.

As to the former, the delivery of the Canada Pension Plan, Medicare, and hundreds of other social and industrial development programs between 1963 and 1984 necessitated both a massive and brutal invasion of provincial jurisdiction while allowing, for the first time, really, of the "nose of the camel in the tent". Premiers became major national players with, by 1968, national recognition, and some espoused national views. And it lead to larger provincial bureaucracies and larger provincial budgets and, to a greater degree, of provincial bureaucratic expertise on some complex issues. No longer were Premiers unaided in their battles with Ottawa and, by the late 1960's, in many fields, the greater expertise lay with some of the provinces — Quebec, Ontario and Saskatchewan in particular. This "trauma" in our federal-provincial relationship created many hard feelings, much bruising, and greater and greater Provincial resentment of the Federal apparatus and its ubiquitous and intrusive policies. Is it any wonder that the relations between Premiers and the Prime Minister became increasingly sulphurous over those two decades?

As to the latter, Liberal preparations for the 1962 election in Quebec built upon the provincial success in 1960, and the development of a highly "Quebec oriented" autonomous campaign. In English Canada, the rebuilding effort was directed toward the newly rising

urbanities in Ontario. The Party hired, as its National Organizer, a man who had never been west beyond a hundred miles of Toronto. He became known, outside of Central Canada, for his oft repeated maxim that "There are more seats in Metro Toronto than in all of B.C.". The election planning was done on a Toronto—Montreal axis. Great effort was made in Ontario and Quebec to recruit a cadre of bright, accomplished and ambitious young candidates. The West, where some significant rebuilding was taking place anyway, was ignored, and politically was, in essence, "written off" as a source of Commons seats: anything won in the west was an unsolicited bonus. The pattern set in 1961 was to endure for thirty years, and continues to be the attitude of the Liberal Party today.

The strategy was remarkably successful: had the focus not been so tightly urban — particularly in Quebec where the rural based Creditistes won some 32 seats — it is possible that the Liberals could well have formed a minority government in 1962. As it was, they had to wait until 1963.

With the votes counted, Prime Minister Pearson had a minority government, but no substantive representation in three of the four western Provinces, and in B.C. — where Liberals held five of seventeen seats — the two Cabinet Ministers were barely on speaking terms with one another, and neither had a mandate to speak with authority in Cabinet on regional political matters. The great period of western alienation from the Liberal Party had begun.

The Liberals worked at implementing a very ambitious program of social legislation, expanded the role of the federal government in the economy, and became more nationalistic. But, they did not implement what were in fact real changes in constitutional responsibility through constitutional amendment — in the manner of the Unemployment Insurance Act amendment of 1940. Instead, successive governments achieved their ends through administrative means lacking long term legitimacy. The provinces were either ignored when Ottawa simply acted unilaterally, or they were figuratively bludgeoned, blackmailed, cajoled and threatened into co-operating, but many of the policies so developed and implemented lacked sound regional political support.

The Mulroney Government inherited this framework and didn't understand the extent to which federal- provincial relations were warped by the previous three decades experience and that ordinary Canadians were fed up with federal policies being imposed on regional sensitivities. Without understanding the need for time, patience and, more importantly, the regional legitimacy that could be obtained by an open, participative process of constitutional change and, with the Parliamentary opposition cowed into silence by a fear of offending Quebec, the Conservatives proceeded with the Meech Lake Accord. It was the last straw! There was no meaningful dialogue on Meech Lake and, in my view, the initiative was fated to disaster once the Accord could not be approved quickly by Legislatures. Simply put, Canadians generally are just damned mad about the elitism of Parliamentary government and First Ministers' meetings wherein very small groups, in secrecy and without public discussion or understanding, make substantial changes in the rules of the game.

Thus, in my view, we got to our current state of national disunity because we lost sight of the fragility of consent in our diverse federal country. We failed to continue to give the regions a sense of influence at the centre through competent cabinet representation, and too much federal policy was developed in secret, with inadequate consultation, and imposed on the country by a bureaucracy insensitive to regional differences and lacking in regional accountability. Eventually, this sense of "things being shoved down our throats", and regional impotence, has lead to regional alienation , a total distrust of — and contempt for — the federal government, and the concomitant loss of will to continue to

work together as a cohesive political unit. And the Liberal Party never did manage to build any substantive political bridges into rural and western Canada, nor did it try. In long range political terms three things permeated the consciousness of westerners during the 1963 - 1984 period.

First, if westerners elected no Liberals to represent them in the federal Cabinet (and Senators, quite frankly, wouldn't do although several tried hard), they had no advocates in Cabinet. Second, if they did send Liberal M.P.'s they found them frequently not of the calibre required by the job: Western Ministers and M.P.'s were vastly outnumbered and often out-manoeuvred by their eastern colleagues, and the candidate "recruiting job" done in Ontario and Quebec was not matched by equal efforts and successes in the West. Third, with Cabinets becoming larger and larger, with decision making becoming more complex and collegial, the role of regional ministers — outside Quebec — declined, almost to nothingness: western ministers became regional ciphers.

The change of government in 1984 proved the reality of this last point. While under the Conservatives, the West had elected ministers, and competent ones, in substantial numbers, the Prime Ministership remained with Quebec, as did much of the national agenda.

The contrast in style and effectiveness on regional issues between Quebec's power in Cabinet, and the influence of other provinces, has been startling, and leads me in turn to my second point.

II. Why B.C.'s Federal Interests Have Been Badly Served

The Quebec Liberal caucus 1963 - '84 was always large — forming always between half and a third of the government's Members, a powerful enough force, even if unfocussed and undisciplined, which it was not. Quebeckers were generally unified in their positions in Cabinet and caucus, and in essence dominated successive governments. In the Parliamentary restaurant the Quebec caucus had their own large booth where Quebec Ministers and backbenchers ate together every day. Problems were discussed; consensus was worked out; favours sought; adjustments requested. In the early 1980's, a writer working on a book on lobbying in Ottawa commented to me that there were only three powerful and pervasive lobbies in Ottawa, "The Banks, Agriculture, and the Quebec caucus of the Liberal Party". Today, one can substitute "the Quebec caucus of the Conservative Party". Quebec M.P.s never lost sight of the fact that their primary role was to defend and advance the interests of the business, people, and culture of their province, and even if they had national ministerial responsibilities, these came second. Few non-Quebec Ministers and M.P.s in government have had the same perspective and mission. Mr. Bourassa referred to it as "profitable federalism".

Is it any wonder that, over the years, non-Quebeckers developed a growing sense that the Federal Government was dedicated almost entirely to the concerns of Quebec?

Contrast the orientation and the unity of purpose of the Quebec caucus with that of B.C. Never united in any way, the fifteen B.C. Liberals I witnessed in the early '70's met only once a week — for dinner on Tuesday — drank too much, and fought bitterly over inconsequential matters. The pervasive disunity of the caucuses from B.C. has reportedly not changed, despite changes of personnel or of government. B.C.'s representatives in Ottawa have rarely been united, disciplined and well led, with the result that B.C.'s federal efforts and presence are diffuse and ineffective.

Does it matter? Well, when a large industry association from Quebec goes to Ottawa to discuss its concerns, believe me when I say it has no trouble arranging meetings with Quebec's M.P.s. But I recall vividly when the senior executives of B.C.'s Mining industry

went to Ottawa in May of 1983, 1984, and 1985 and tried to arrange breakfast meetings (everybody eats breakfast) with the Conservative caucus (on Wednesdays, when most M.P.s are in Ottawa). Two of thirteen Conservatives showed up in '83 and '84, three of eighteen in '85.

Now, this is not a criticism of those M.P.'s nor is this a partisan remark: I recall acidulous remarks by the forest industry toward the inattentiveness of the B.C. Liberal caucus in the late '70's. But it is an observation as to how B.C.'s M.P.s see their roles — and it is not as regional spokespersons in Ottawa. The contrast with Quebec could not be greater, and as a result, B.C. has almost no influence on national affairs.

The other facet of dismal regional representation and effectiveness is that we Westerners have not generally seen appointed to the Federal Cabinet the best people our societies could produce. An exception, in my view, would be the Cabinet representation from the three Prairie Provinces in the current Mulroney government who are as good as any.

But it is a sad thing to say about B.C. that we have never sent to Ottawa to serve in Cabinet anyone who achieved first rank status such that they have been really effective regional spokesmen. Most other provinces have produced Prime Ministers; B.C. has never produced even a serious candidate (i.e. one of the three finalists) for the national leadership of the two major parties. Simply put, British Columbians don't participate; we don't play the game; in the final analysis, serving in Ottawa is not seen by our best as a worthwhile endeavour.

I don't mean to denigrate the hard work and good intentions of the many who have tried. Several — H.H. Stevens, James Sinclair, E. Davey Fulton, Ian MacKenzie, Ron Basford and John Fraser either had the potential or came close, but none have succeeded.

But why should politics be different from legal or regulatory appointments to be made regionally? It is extremely difficult and sometimes literally impossible to recruit well qualified B.C. residents to serve in Ottawa. Or different from business: the number of businesses or business interests from B.C. represented in Ottawa can be counted on the fingers of one hand. B.C.'s businessmen do their best, too, to ignore Ottawa, and are in turn ignored by Ottawa. The arts community? Our universities? The mutual ignorance has been devastating to B.C.'s interests over the years. The list of where, how, and what B.C. has "lost" is a long one, and in monetary terms and opportunity costs alone would total tens of billions of dollars. But B.C.'s loss is also the country's, because we have not contributed, either, except financially, to the country, to the extent we should have.

Even the B.C. government was one of the last to set up a Federal-Provincial affairs bureaucracy; only infrequently has it been given Ministerial status, and only lately has B.C. opened an office —still woefully undermanned — in Ottawa.

Thus, when we B.C. citizens put so little into our nation's affairs, it's no mystery why we get so little back. But we have not only ourselves to blame if B.C. is ignored by Ottawa as we have been ill served by those great national institutions — the parliamentary system and our highly disciplined, centralized, top-driven political parties.

III. Why the Parliamentary System and Our Political Parties are No Longer Effective Servants of the Regions

At the centre of Canada's current malaise lies the failure of the Parliamentary system and the Cabinet system to adapt, and the failure of three successive Prime Ministers to understand what they were doing to the long term structure of the country as they incrementally let "the whole provincial camel come into the tent", while allowing the regional role of Federal Ministers to be reduced to nothing.

The result — allowing more and more key national decisions to be made by a group of people without national responsibility, perspective, or experience — was predictable — eleven people around a table agreeing on very little.

I recall serving briefly on B.C.'s Cabinet Committee on Confederation in 1977. Of about twelve ministers and officials, I was the only one to have spent any of my adult life in Canada outside B.C., and as a result, my perspective was different. People who don't travel in Canada outside B.C. — and most of our citizens go south to vacation —lack a certain understanding, a perspective, of the problems and priorities of other places in Canada. On national issues almost all Members of Parliament eventually develop something of a pan-Canadian view through travel, committee assignments, cabinet and caucus discussion and national responsibility. Premiers have no such discipline, experience or outlook. Of the current group of First Ministers, only one, I believe, (Bob Rae of Ontario) has any life experience in Canada outside his home province. This lack of a common view has been the inherent danger of moving the primary forum for discussing the regional implications of national issues from the federal cabinet to federal-provincial conferences. Thus, when our Premiers get together to discuss national issues, none have a national view, resulting in a dialogue of the deaf, rather than a reasoned discussion of common problems from a common perspective.

What, then, is the role of Parliament in articulating regional problems, resolving regional grievances? None, and realists have come to conclude that Parliament is a sham, and is ineffective in representing and advancing regional interests. All Parliamentarians do, after all, is talk and increasingly, no one listens. If an interest group really wants to have its interests attended to, it requires representation on the Treasury Benches, around the Cabinet table, where policies are decided —in secret remember — and resources allocated. But as Cabinet has grown to forty members, it has ceased to be able to function as a Cabinet should in a Parliamentary system, and certainly has ceased to be effective as an arbiter of regional interests.

What, you might say, about the idea of a Triple E senate? Elected, equal, effective. It is a silly proposal championed by people who don't understand modern government. A Senate — in a Parliamentary system — is only capable of reaction to legislative initiatives by the Executive — that is, by the Cabinet. Yes, a Triple E Senate might talk more about regional problems as it masticates legislation but I doubt that, given our highly disciplined, highly centralized political parties, anything much would really change. I cannot think of a single legislative initiative that would have been stopped or even substantially modified by a Triple E Senate in the past thirty years without the parallel weakening of Party discipline.

There is a real misunderstanding about what is important . The need is NOT to get regional control of legislation, but to get regional control of the administration of that legislation and regional accountability for funds expended. No Triple E Senate, however well intentioned, can do that because bureaucrats hide behind Ministers in a Parliamentary system, and budgetary allocations are made in secret . Only a fundamental change in institutional arrangements will have any real impact, and a Triple E Senate is not, frankly, fundamental.

As to our national political parties, they generally operate on three principles that preclude regional sensitivity.

First, representation by population means that "Inner Canada", with about eighteen million people in two provinces will dominate over the interests of eleven million people divided among eight provinces. Second, economic interests in Canada are highly centralized in Central Canada and they are a major influence on our parties. The head offices of our major corporations, almost all our finan-

cial institutions, the bulk of our trade unions, our communications companies, and so on, are located in the Toronto-Montreal axis.

Not only the political involvement of the talented people that run these companies and unions is important, but the bulk of the money spent by political parties originates in Montreal and Toronto.

Third, Party discipline in the Liberal and Conservative parties are paramount virtues.

Much has been said about some minor changes in the formalities of Parliament such as "free votes", fixed date elections, limiting "confidence" votes and so on. It is all nonsense.

In both national political parties, it is heresy, punishable by lifetime banishment to the backbenches, to stray very far from orthodoxy. It's acceptable to take one's cap in hand, brush back one's forelock and hesitantly offer in caucus, as perhaps a suggestion, that a certain policy may have devastating regional political/economic/etc. consequences outside Inner Canada, but God help anyone who actually stands up publicly and points out the negative effect of such a policy with irrefutable facts and withering logic. Real life for the Parliamentarian is more or less like:

> "Do you, Mr. B.C. M.P., want a federal wharf in your riding? A visit by the Prime Minister? A grant for that favoured cultural group? Do you want the Leader to sign your nomination papers in the next election (without which you cannot be a Party candidate)? Yes? Then don't rock the boat."
>
> "And, Mr. B.C. M.P., if you want to be considered for Cabinet, you go back to B.C. and tell the folks that this is the best policy since Confederation."

All the changes in the formalities of Parliament will not change the reality that Prime Ministers and their advisors want in Cabinet those people with whom they feel comfortable. And people who argue the regional case makes these centralists uncomfortable.

B.C. M.P.s on the Government side have, over the years, found themselves in the untenable position of either promoting bad national policies in the Province, and being defeated in the next election as a result, or not promoting them, seeing their constituency interests suffer (as a result of Party discipline) and being defeated. The turnover of Liberal B.C. M.P.s from 1935 to 1980 — during which Liberals Federally were dominant — has been rapid. Very few lasted more than one or two Parliaments. The exceptions became well known for surviving by speaking out strongly inside caucus and Cabinet, but saying little critical of the government outside. For example, Jimmy Sinclair, who should have been brought into Cabinet in the mid '40's earned MacKenzie King's ire for speaking out strongly. But he was able to hang on, and after being elected three times, earned a cabinet post.

Ron Basford, the only other example I can think of, survived through fifteen years and five elections, but paid a severe price in the Cabinet pecking order by speaking out, particularly in 1973 -'74, and thereby coming close to leaving the Cabinet in 1974. Ultimately, his growing sense of regional frustration was a major cause of him voluntarily leaving a senior portfolio, at the early age of forty six, after ten years in Cabinet, and resigning from Parliament.

Pat Carney's recent Senatorial committee experience, one from outside the Cabinet, only re-enforced, for me, the realities of party discipline, as it relates to B.C.

One could go on with examples but just let it be summarized as follows: Parliamentary government depends in its essence as much on the tractability of the backbench as it does on secrecy and Cabinet solidarity. On some issues, backbench docility is ensured by genuine agreement; more often, it is formed by a hundred different kinds of moral suasion, capped ultimately by the backbencher's awful choice of crossing the floor or leaving politics as the only alternatives to supporting the party line. Better, most rationalize, to continue the fight from "inside".

It is, in the Cabinet system of Parliamentary government, almost hopeless for a politician with regional matters on his agenda —outside of Quebec — to be effective — or even to survive, on the "inside".

The result, then, of the regional insensitivity of both the Parliamentary system and our national political parties, has demonstrated itself in the growing public cynicism towards the lack of responsiveness of politicians in general and Ottawa in particular. It shows in the general disinterest in being prepared to meet Quebec's constitutional objectives with any kind of compromise or even —in the minds of many any discussion ("If they want to go, let them go"). It shows in the creation of new, regional political parties: The Reform Party, the Confederation of Regions Party, the Bloc Quebecois — likely would each elect members if an election were held today. And it shows in a growing falling away from the political parties as a method of participating in public policy formation in favour of various citizen lobby groups.

The time has come, if we are to save some semblance of a nation, to recognize that half measures will not do. We need a radical reform of the institutions of governance in Canada.

IV. Where to From Here?

Having at this point painted a somewhat depressing picture of a Canada that doesn't work very well in satisfying the regional needs of its people in Outer Canada, let me offer a possible solution: it is the abandonment of the Parliamentary system of government in favour of a Congressional system somewhat like that of the United States.

First, we would have an elected President as Chief Executive. While not a Quebecker, if Quebec "separates", he/she may have some responsibility for some aspects of public administration in Quebec, if some kind of "associate" status for that province emerges. Since our electoral and political process is becoming much more "Presidential" in any event, this is not much of a change.

The Cabinet would, hopefully, be chosen for talent and ability, by the President, from the best people in the Country not just from those thrown up by the electoral system. If Quebec remains a partial responsibility, Quebeckers may be chosen to be the political heads of departments for which overlap continues. Or there may be a case for "associate minister", to be named by Quebec and approved by both the President and the Senate, to deal with Quebec issues but not with Canada. A Vice President would be elected but the President should be encouraged to appoint the Vice President to the Cabinet, providing that person with not only a meaningful role (as opposed to the U.S.) but ongoing close knowledge of the affairs of government.

The Cabinet should be able to be reduced to no more than eighteen people because the current political burden carried by Ministers to appear in Parliament daily, to attend caucus, and to handle their political duties would be all but eliminated, leaving them more time to be what they should be — more effective politically appointed heads of departments. Departments of government established to show the government "cares" about some constituency (i.e. small business) or other would disappear, as would any "regional political role" for Ministers, since they wouldn't be elected.

The House of Representatives of about two hundred members would be elected for a four year term, with perhaps half coming up for election every two years, thus preventing the whole congressional agenda being entirely political during election year, and at the same time allowing for shifts in opinion to be registered electorally within a time frame shorter than four years. Representation would be by population by Province, and despite its shortcomings, using a "first past the post" electoral system rather than proportional representation.

The Senate would have twelve members from each of the remaining six Provinces. Why twelve? Why six? First, a dismembered Canada will be a much poorer place and it will simply just not be able to cope with the four Atlantic provinces' lack of economic strength and their inefficiency. Political union for those Provinces will be necessary to make a new Canada work with any sense of balance, what with the vacancy of Quebec splitting West from the Maritimes. Thus six provinces. Canada is already dominated mightily by Ontario —not only governmentally (Ottawa is there), but economically, culturally and politically. After Quebec leaves, Ontario will have about 50% of the population and over 50% of the G.N.P. Only a Senate that grossly underrepresents Ontario's interests will provide any sense at all of balance in the new federation. A Senate of seventy two members (6 X 12) would be sufficiently large enough to work, yet sufficiently small so as to give individual Senators real authority. I like the U.S. practice of six year terms, with one third of the Senate being elected every two years.

One of the side advantages of a Congressional system will be the severe weakening of the national political parties and the constraint they have, through political norms, the maxims of cabinet unity and secrecy, financially, and through threat of exclusion from Cabinet, on expressions of a strongly regional nature. While we would want to avoid the problems of U.S. politics (by continuing to reform party financing, forbid business and large contributions, political action committees, and severely constrain both non-party political advertising and the use of television and radio advertising), I believe that we would end up with both a better political system and a better governmental system.

Why? First, because central Canada would no longer dominate the whole Canadian agenda quite as much. Second, because there would be weakened national political parties, the Representatives and Senators would be able to speak out for the regions. This would lessen the need for Premiers to do so, returning the responsibility for discussing national issues to a forum intended for national debate, the national Congress. We could then preserve the strong central government that most English Canadians desire, while at the same time having the benefits of regional sensitivity. In other words, to get sensitivity, it would not be necessary to devolve further powers to the Provinces, thus adding to the country's centrifugal forces. In my view, while there is room for much "disentanglement", further "devolution" of power is dangerous, particularly with the departure of Quebec.

Some may well be critical of the congressional system. Certainly it has its faults. But it has, in the U.S., proved itself over more than two hundred years of vast change to be very adaptable in a society much larger and more complex than our own. Some may dislike the checks and balances system, pointing out its "inefficiency". While there may be some truth to this, look at where Parliamentary efficiency has brought Canada: to the edge of dissolution. And Parliament is only "efficient" if one Party has a majority. At this point, it would appear the next election will (if there is one) produce a Parliament in which none of the five Parties will have over one hundred seats, and three parties could well have about forty each. A Congressional system does not create "ins" and "outs" quite the way Parliaments do, and thereby is less confrontational.

No, regional political pressures have now developed past the point of no return: we'd best develop a political structure to accommodate this development and the Parliamentary system certainly won't during this time of crisis.

As well, under the Parliamentary system, those in Cabinet are "somebodies" and those in Opposition or the backbench have apparently become "nobodies". Few people of real talent want to take the risk of election to public office only to be shut out of having some influence on their times by being in

Opposition or stuck on the backbench. With a Congressional system, Cabinet Ministers are chosen — hopefully for their ability — and each Representative and Senator is equal with every other — and by dint of hard work and talent can rise to influence. Each is elected for three purposes — to represent their constituencies, to legislate, and to hold accountable the executive for their administrative and fiscal actions.

If we are going to get through the next few years, we must entice into public life our best people. They will only volunteer to serve if they think their role will be meaningful. Present institutions provide no such attraction.

Clearly, the flexibility required for the changes to come is more than can be accommodated by the inherently confrontational nature of Parliament, and by the very rigidity of Cabinet government, intolerant as these institutions are of ideas from outside the Government. In the months and years to come, we will need tolerance and understanding, and we will need to recruit to office our brightest, most talented and articulate citizens.

In Parliamentary debate, tolerance and understanding are subsumed beneath partisan advantage; good people will not come forward to participate unless they can participate as individuals, free from the iron hand of party discipline.

Which leads me to my last point of constitutional amendment.

Under our current system, constitutional amendments are made on a very small base of opinion — in essence those opinions of the handful of people who are First Ministers. And if it is to the short term political advantage — or disadvantage — of a particular Premier to agree, or not agree, and to have his Legislature approve, or not approve, the whole tenor of constitutional discussion changes. Indeed, the Meech Lake Accord ultimately failed because two Premiers, having agreed to the changes, failed to carry through in their Legislatures prior to an election defeat. Starkly put, the very rigidity of constitutional change, the near impossibility of it, was what drove successive federal governments to achieve desirable goals through questionable and illegitimate means, bringing us to our current state of constitutional distemper. Clearly, we need another method of constitutional amendment, and that may well be some combination of the Senate (in the congressional system) coupled with a delegation of constitutional agreement from Premiers and legislatures to constitutional conventions in each Province, or to a national vote.

But Premiers, no matter what happens, will have to give up their sole right to speak for their provinces on constitutional matters if the country — or even what is left of it — is to survive as a federal system past the year 2000. The temptation to either play constitutional politics, or to agree or disagree to change out of fear of electoral consequences, puts too much pressure on individual Premiers in a system where change too often requires unanimity.

Because, in the current constitutional debate, the Federal Cabinet is perceived to be dominated by Quebec, the Prime Minister is a Quebecker, and no anglophone Canadian in the Cabinet is taking on any "national spokesman" role reflecting the "rest-of-Canada", the discussion is unfocussed, provincially based, and not constructive. No "alternative" is emerging. B.C. should be offering those alternatives. While some other writers will have suggestions relating to specific powers, I limit myself to issues of structure and process.

Recommendations

If "Canada" is going to get some focus, not only on what kind of deal it might do with Quebec, but the kind of structures and powers it needs to feel comfortable within itself after new arrangements are made, the first priority, is to establish some kind of non-French-Canadian constitutional forum separate and apart both from partisan politics and from

provincial government structures. The B.C. Government, representing the third largest province, could take the initiative to invite the other governments to a Conference to discuss such a Constitutional Forum, its mandate and its structure.

A second priority would be the commissioning of some studies, many hopefully by thoughtful actors in the political and governmental process rather than limited to academics, of how B.C. might play a more positive and meaningful role in the governing of the "rest of Canada", and arrange for an extensive and broad discussion of these papers.

Third, B.C. should create a "Constitutional Convention" of its own with a mandate to advise the legislature. An All-Party constitutional committee of the legislature should be established.

Fourth, a B.C. spokesperson should go to Quebec and clearly enunciate B.C.'s situation and perspective that:

a) English Canada is not a homogeneous unit and that in many respects, B.C. is as different from Ontario as is Quebec.

b) The Federal Government, led by a Quebecker and dominated by Quebec M.P.s, has absolutely no mandate to negotiate, on its own, any changes to the constitution with Quebec that would lead to the dissolution of the union.

c) B.C. desires very much to keep Canada together and it is prepared to make substantive adjustments to meet Quebec's economic and cultural objectives.

d) However, no constitutional changes can be achieved if we only deal with Quebec's concerns. B.C. has substantial dissatisfactions with the way Canada's federal system has worked and will also be pressing for changes. In this, Quebec must understand it's a whole new game for everybody.

e) That in the case no accommodation can be made with Quebec,the borders of the new state are one of the items of contention. French-speaking areas of Ontario and New Brunswick, contiguous with Quebec, may want to go with the new state. At the same time, Northern Quebec, areas that were not part of New France or even Lower Canada at the time of Confederation, and remain to this day mostly populated by indigenous peoples, must be given its own right of self-determination.

f) The Parliamentary system is a major part of our problem and must be abandoned in favour of some kind of congressional system. Any new structure must have a system of checks and balances in it such that no single province can dominate our national political structure.

g) Canada has no pan-national Parliamentary group outside the House of Commons, although Canadians participate in a number of international Inter-Parliamentary organizations. B.C. should take the lead in creating a Canadian Interprovincial Parliamentary Union that would encourage Provincial politicians to travel, speak, and learn in other parts of Canada. Perhaps, over time, if Canadians generally won't travel across their vast land in search of better regional understanding, at least their provincial politicians might.

Finally, British Columbians must now look themselves in the mirror and examine their own personal will — I can think of no other word than "will" — to co-operate, to contribute, to create and re-create in our renewed nation; and those who can lead, must lead now, and do so with courage, vision and commitment, and without partisanship.

Without both leadership, and broad participatory support for leaders at this time — without a reversal of the tide of cynicism and negativism that has overtaken us, — it is clear that Canada, or even some truncated version, will not long survive.

Post Script

I have written much of the foregoing while on a consulting assignment in a third world country in the South Pacific,one that has severe racial, economic and political problems. That perspective caused me, in my pessimism about Canada, to realize just how lucky we Canadians are, how much we have achieved, and how irresponsible we will be, if we allow our country to divide and decline. If it happens, the politicians of our generation will truly deserve banishment from the history books.

Brief to the Cabinet Committee on Confederation

Presented by La Fédération des Franco-Colombiens
Yseult Friolet; Executive Director

Introduction

This is a great opportunity for the Fédération des Franco-Colombiens to present its position on a variety of issues to the government and to the people of British Columbia and of Canada.

In view of the recent political turmoil disturbing our country, it is essential to open a dialogue with ordinary citizens. We are aware that the Federal government has already expressed the same willingness by organizing various commissions to consult Canadians throughout the country. We are happy to see that our own Provincial Government also wishes to give us the opportunity to express our concerns, to share our opinions on Canada's prospects with other ordinary citizens and with our provincial partners.

The present paper will describe how we see the francophones' future linked to the fate of British Columbia as well as to that of Canada. We will also explain our vision for a new federalism and the constitutional amending procedure we recommend to achieve it. Finally, we will examine the different issues that need to be addressed within this constitutional amending procedure.

It is our hope that such a presentation will be the groundwork for future negotiations between our francophone community and the Provincial Government as well as the opportunity to open a dialogue with other interest groups in British Columbia.

The Francophone Community Highlights

The Fédération des Franco-Colombiens is the official spokesman for the francophone community in British Columbia and has as its mandate the promotion and the defense of minority language rights at the provincial and federal levels.

Established some 45 years ago, the Fédération serves a population of approximately 50,000 francophones in British Columbia. The francophone community has three French first language schools, a community school and a network of classes throughout the existing provincial school system. The francophone community also has its own weekly newspaper (Le Soleil de Colombie), and six French bookstores (Librairies Colombiennes) selling a variety of French books.

Since the Supreme Court's decision with regard to section 23 of the Charter of Rights and Freedoms in the Mahé case, the implementation of minority language education management rights is currently a matter of negotiation between the community, the Provincial Government, and the various stakeholders in education.

Francophone Historical Links with British Columbia

The Fédération des Franco-Colombiens is committed to the fundamental values that made Canada a unique country in North America. A country whose social fabric is made of two distinct communities, the francophone community and the anglophone community; a country where respect for differences is based on the recognition of these two communities at the time of confederation and based on the principle of linguistic duality; finally, Canada is a country where the diversity of ethnic groups is seen as a major contribution to the nation's cultural wealth.

If the country's bilingual policy has possibly been a source of problems in the implementation of government services, it has also created many opportunities. For instance,

which other country can boast of membership in the Commonwealth community, the international francophone community, as well as the Group of Seven?

The francophone fact is an inherent characteristic of Canada's social fabric; that community cannot be confined to a specific geographical area but rather is to be found throughout the country from coast to coast. As a matter of fact, the francophone community in B.C can find its roots in the last century.

In 1793, the Alexander MacKenzie expedition was the first to cross through the Rockies to explore British Columbia. Among the expedition's twelve members, six were French Canadians. In 1850, 60% of British Columbia's population was French speaking. This was due to the Hudson Bay Company's activities in the area, especially in Fort Victoria, where a large number of French Canadians came to settle while working for the company. Some architectural designs are witnesses to this francophone presence as, for instance, the St. Ann's Academy which has been classified a provincial heritage building. At the turn of the century, in 1909, French Canadians were also recruited to work in the forest industry. Upon its arrival, this francophone population established its own parish, Notre-Dame de Lourdes and in 1912, this community took on the name of Maillardville. Today, this community is still quite visible and has celebrated its second annual "Festival du Bois".

Prospects for the Francophone Community in B.C. and in Canada

Organized around a few institutions, the francophone community in British Columbia has developed an identity of its own. It is unlikely that it will just disappear, and regardless of Canada's future, the francophone community is determined to survive and evolve. Actually, the same argument can be made for all francophone communities throughout the country. They have roots in the historical past of their own provinces and not one of them is ready to simply vanish. In the same way as a British Columbian is somewhat different from an Albertan, a Franco-Columbian is quite different from an Acadian, but all are Canadians.

Federal policies have encouraged the development of francophone communities throughout the country but it would be erroneous to think that these communities just appeared because of government policies. Actually, it would be closer to the truth to argue these communities developed despite the lack of support of most provincial governments.

In our understanding of Canada's future we not only advise a strong commitment to traditional values but also a recognition of the native community as an inherent part of our social context. The concept of two founding nations must be reviewed in order to include the native community in the definition of Canada. It is time to mend past errors and to develop a closer relationship with the First Nations so that we can all live in harmony. This is also an opportunity for Canada to earn its rightful place within the international community by developing a political model that will respect native traditions and will allow native people to live their own culture within today's world. Therefore, we see Canada made up of three major national communities, native, francophone and anglophone; multicultural groups are grafted on these three communities contributing to the national cultural wealth as our country welcomes new Canadians. Within this Canada, all Canadians are equal, regardless of the community to which they belong. But such a future can only be realized if all levels of government and the people actively embrace and defend these values.

The Fédération des Franco-Colombiens is, therefore, a strong advocate of Canada's traditional values and a strong advocate of the Provincial Government's active role in implementing these values. More often than not, minority language rights are barely respected.

To illustrate this point, the impact of section 23 of the Charter of Rights and Freedoms

on minority language education can be examined. In each of the provinces, the francophone minority had to go to Court in order to obtain full enjoyment of its right to French education. Along the same lines, in British Columbia, despite the amendment of the Criminal Code that came into effect on January 1st, 1990, granting the right to French trials, this right has been recently denied to a francophone. The need for a radical change in attitude is commonly felt by all minority language groups. Provincial governments must do everything in their power to implement rights granted by the Charter and their commitment must go beyond a passive recognition of granted rights; provincial governments must act of their own will in this respect. Linguistic duality must become a reality throughout Canada. Only then, rights granted by the Charter can lead to the attainment of a just and equal society.

The Constitutional Amending Procedure: An Opportunity for Public Participation in a New Federalism

Apart from the francophone community, the population of British Columbia is made up of a great variety of ethnic groups, many from the Pacific Rim countries; native people are also an important part of its population. All these different elements must have a say in the amending procedure of our Constitution if we are to develop a consensus among all Canadians in the definition of our country.

The Fédération des Franco-Colombiens believes that a constituent assembly would best serve the interests of all concerned citizens of British Columbia and of Canada.

The Constituent Assembly: A Choice Based on Our Country's Fundamental Values

Although the constituent assembly model is not a tradition in Canada, it is one which allows greater latitude for an amending procedure. The constituent assembly involves constitutional participants at the consulting and negotiating stages and thereby makes it possible for them to debate on a number of issues upon which they do not necessarily agree. In other words, the constituent assembly model is based on the principle of consensus. It is an exceptional device designed for exceptional circumstances. And no one today will deny that our country is facing exceptional circumstances, and that a consensus must be reached.

If many different people with many different interests are able to meet within a constituent assembly, one can argue that the constituent assembly is able to represent a variety of views and concerns that are to be found within a given society. Canada being established on the principle of "unity in diversity", is there any other amending procedure model more suitable to reflect the country's diversity than a constituent assembly?

The choice of a constitutional amending procedure is based on the fundamental values of Canada, that is to say on the principle of tolerance towards minority groups and on the principle of the linguistic duality of this country. Moreover, we also think that the native community must be recognized as an inherent part of Canada's social fabric. All Canadians must be involved in the constitutional amending procedure rather than being confronted with a "fait accompli".

These are the reasons why we think that a constituent assembly would not only allow the different levels of government, but also the various participants, ethnic groups, natives, francophones or interest groups such as women or the disabled, to be able to express their views on constitutional reforms, to debate issues and to finally reach a consensus.

The Mandate of a Constituent Assembly: The Representation of Various Interests Within the Constitutional Amending Procedure

The ultimate mandate of a constituent assembly would be to propose to the country a new Canadian federalism. This new federalism must be based on the traditional values of Canada but it must also be defined in light of the diverse aspirations of the people. We are all well aware of Canadians' frustration with the procedures that prevailed for the Meech Lake negotiations which were made behind closed doors, involving little public consultation. Therefore, it is important to make sure that Canadians are directly involved in the definition of this new Canadian federalism and that the legitimate claims of various interest groups be addressed. The recent political upheavals have given us a good indication of what these claims might be.

For instance, native issues are constantly being brought to the negotiating table; be it the natives' economic situation, their claim for self-government, or the place they should occupy in Canadian society, there is no doubt that these questions must be addressed. It is time to give an attentive ear to our native fellow-citizens. As it has been suggested, the concept of two founding nations must be revised so that the native community can be truly integrated within our social context. It is time to open negotiations and to negotiate within the framework of a process which would include native people in the amending of the Constitution.

As for francophone communities throughout the country, it must be pointed out that the concept of linguistic duality as recognized in the Charter of Rights and Freedoms is little more than a mere concept. For many francophones throughout Canada, linguistic duality has not become an everyday reality. It is also necessary for this particular group to be involved in the amending of the Constitution and to be involved in the consulting and negotiating stages of such a procedure.

Women's groups have also their own claims. What happened to the principle: "Equal pay for equal work"? Do women have the same chances of career advancement as men without the necessary social structures that would allow it? Who could best defend such issues but women within the framework of a constituent assembly?

If each interest group's concerns are examined, whether they deal with ethnic issues, women's issues or the disabled's, it becomes clear that those who experience these problems first-hand are the most qualified to discuss them and to find solutions. A constituent assembly would become the forum of all these various interest groups where each reality would be represented.

The Composition of a Constituent Assembly and Its Deliberation Process

Public consulting and consensus are the two basic principles upon which a constituent assembly is established. As we have demonstrated, public participation in constitutional reforms requires a representation of all interest groups mentioned in the Charter of Rights and Freedoms, that is to say, the representation of all constitutional participants. On the other hand, a consensus will also have to be reached with the participation of all political factions. The representatives of legislative assemblies, federal, provincial and territorial of all parties in power will have to meet those of opposition parties.

The constituent assembly could be made of three main delegations: a political delegation with federal, provincial and territorial representatives, a delegation of constitutional participants and a native delegation.

Given the special circumstances surrounding native peoples, it would seem appropriate that they constitute a separate delegation.

As for minority linguistic communities, the Fédération des Franco-Colombiens would be in favour of an anglophone delegation from

Quebec and a delegation of francophones outside Quebec with at least one representative from British Columbia.

Since the constituent assembly must ensure public participation in constitutional reforms through elected or appointed representatives, deliberation within the constituent assembly would have to be a public one. In some cases, negotiations could be made behind closed doors but it would be an exception to the rule.

From the Consulting to the Ratification Stage

Once Canadians' participation in constitutional reforms is ensured through the election or appointment of representatives in the consulting and negotiating stages, the ratification procedure could remain the same as provided by the present Constitution. It would be cumbersome to change the ratification procedure since sections 38 to 49 of the present Constitution would require unanimity to be amended. While the consulting and negotiating stages seek to complement the ratification process, they do not intend to change it.

The Referendum: The Law of Numbers

While a constituent assembly ensures public participation at the onset of the constitutional amending procedure, a referendum involves public participation only during the last stage of that procedure, namely, the ratification stage.

Moreover, as many experts have argued, a referendum is more suitable to homogeneous unitarian states but it is problematic for a country like Canada. While a constituent assembly is based on the consensus of all participants, a referendum exacerbates opinions; while a constituent assembly unites all participants in an acceptable compromise, a referendum divides the population into winners and losers.

Constitutional Reforms Through Referenda

1. National Referendum

To settle constitutional issues by referendum seems to be favoured in some political circles. But it is an option that may create more problems than it can offer solutions.

A referendum may appear to involve Canadians in the constitutional amending procedure, but in reality, it involves them only at the ratification stage. A referendum also tends to overlook the complexity of issues at stake by requiring the formulation of questions to which only a yes or no answer can be given. There is no opportunity to give a qualified answer such as "yes, but" or "maybe". It is a win/lose situation.

Other problems may arise. In the case of a national referendum on the constitutional amending procedure who will determine the question to be put to the people? Will Canadians be expected to become experts in constitutional law so that nothing escapes their understanding of the issue at stake? Is it realistic to expect an informed answer from Canadians when dealing with the complexity of constitutional law? Will a simple national majority be required? Or a national majority including a majority in a majority of provinces? Or a national majority and a majority in Quebec on certain issues?

Moreover, the present Constitution of Canada does not provide for amendments by referendum. The following questions are put to constitutionalist experts: would a referendum be binding to ratify constitutional reforms? Would it be binding if some provincial governments refused to participate? Would a referendum be actually binding or consultative? How would a referendum settle differences of opinions when what is actually sought is consensus?

2. Provincial Referendum: A Run of the Mill Procedure?

To settle constitutional issues by referendum is also a popular concept with the gov-

ernment of British Columbia. The Provincial Government seeks public participation in the constitutional amending process and considers referenda as a means for British Columbians to express their views and opinions on constitutional issues. The motivation is honourable but the means are inadequate. British Columbians would only be involved in the last stage of the constitutional amending procedure, that of ratification. Citizens of British Columbia would not be directly involved in constitutional reforms since they would not necessarily participate in the consulting and negotiating stages of such a procedure.

As for the formulation of questions, the problem is even more acute. Bill 81 (Constitutional Amendment Approval Act) suggests a referendum for every constitutional amendment. British Columbians may well be interested in some constitutional reforms but they are not necessarily concerned by those strictly dealing with technical aspects. Such amendments are more likely to raise the interest of legal experts rather than that of the entire population of the province. Is it the intention of our Provincial Government to turn us all into constitutional experts? How many referenda will have to be held if every amendment requires a referendum?

Here is what the Provincial Government proposes in Bill 81:

> "...it is essential that the Constitution of Canada reflects the values of British Columbians and that British Columbians have an opportunity to indicate their views on any proposed constitutional amendments;" and further on,
>
> "...The government shall not introduce a motion ...authorizing an amendment of the Constitution of Canada unless a referendum has first been conducted under the Referendum Act."

Only last year, our Provincial Government introduced Bill 55 (Referendum Act) on the holding of referenda in British Columbia. Bill 81 seems somewhat superfluous since, according to Bill 55, the Government is empowered to hold a referendum on "any matter of public interest", be it on constitutional reforms or on any other issue. By adopting Bill 81 the Provincial Government has achieved little more than tying its own hands.

Let's examine, for instance, the case of the first ministers' conference on aboriginal constitutional matters, March 15 and 16, 1983. Section 35 of the Constitution was reviewed:

> 35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
>
> (2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.
>
> In order to add the following sections:
>
> (3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.
>
> (4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

Following this amendment, sections 25b, 35.1, 37.1, 54.1 and 61 of the Constitution also needed to be amended.

With the enactment of Bill 81, all these issues would have been brought to public scrutiny via referenda before the Provincial Government could submit it to the Legislative Assembly. And how would the question have been drawn up? Would it have been clear for everyone that the main purpose of the exercise was to add a third and a fourth subsection to qualify the existing section 35 of the Constitution?

In summary, here are some of the arguments against a referendum for constitutional reforms:

- a referendum, as a rule, would involve the people only in the last phase of the constitutional process, namely, the ratification stage;
- if British Columbians' last word on a constitutional issue is also their only word, a

referendum does not appear as an efficient device to involve the people in the process since the consulting and negotiating phases are overlooked;

- a referendum lacks flexibility; the questions only allow a yes or no answer;
- since constitutional issues are often quite complex, a referendum is not the most adequate means of dealing with involved legal matters;
- a referendum is not based on the principle of consensus; on the contrary, a referendum tends to harden opinions and to divide the population into winners and losers;
- a referendum fails to address the fundamental values of Canada; numbers overshadow legitimate claims of minority groups in Canadian society;
- the Canadian Constitution does not provide for its amendment by referendum; the ratification procedure of the present Constitution would have to be amended with unanimity; this pertains to sections 38 to 49 of the present Constitution.

In Favour of a Constituent Assembly

Any constitutional document outlines the values of a country. Not only must our Constitution reflect the fundamental values of Canada, but the constitutional amending procedure itself must reflect these values, that is, the diversity of social groups in the Canadian society. The Fédération des Franco-Colombiens is in favour of a constituent assembly for the following reasons:

- a constituent assembly ensures public participation at the onset of the constitutional process with a consulting and a negotiating phase, while the ratification procedure remains the same; as a result, sections 38 to 49 of the Constitution do not need to be amended;
- a constituent assembly offers constitutional participants, in general, and francophone communities, in particular, the opportunity to participate in the constitutional process and therefore the opportunity to address issues of critical interest to them;
- a constituent assembly also offers francophone communities the opportunity to ensure that the concept of linguistic duality becomes a reality;
- rather than facing a "fait accompli", Canadians have the opportunity to be actively involved in the constitutional process, right from the beginning;
- a constituent assembly can reflect the values of Canadian society by ensuring all constitutional participants' involvement in the constitutional amending procedure;
- the efficiency of a constituent assembly is based on the principle of consensus of all participants, it prefers compromise over "win all, lose all";
- a constituent assembly is a unique opportunity to formally welcome native people to the negotiating table, to recognize them as full participants in Canadian society, and to offer them the opportunity to be directly involved in amending aboriginal constitutional rights that concern them;
- a constituent assembly is an exceptional device for exceptional circumstances; it allows the representation of Canadians' aspirations and also allows the reconciliation of different opinions.

Debate Content on Canada's Future

The Fédération des Franco-Colombiens recommends the recognition of three national communities (native, francophone, and anglophone), all three pluralistic. Such recognition should be reflected in federal, provincial and territorial institutions in such a way as to allow these communities to meet their specific aspirations.

In light of the recent political upheavals and Canadians' dissatisfaction with the actual con-

stitutional amending procedure, we believe that these specific aspirations, as well as the aspirations of other interest groups, should be addressed within a constitutional amending procedure based on a constituent assembly.

While the Fédération des Franco-Colombiens is most interested in submitting the general outline of its recommendations within the favoured framework of a constituent assembly, it is also quite concerned about the specific content of any constitutional amending procedure, and recommends that the following issues be added:

- Senate reform seeking to find an equilibrium between regional representation and representation of various social groups;
- the redistribution of legislative powers;
- the status of Quebec in the Canadian federation;
- the recognition of self-government for natives;
- the development and strengthening of linguistic duality;
- regional development;
- free exchange of goods and services throughout Canada;
- the status of the Yukon and Northwest Territories;
- greater autonomy for the francophone national community.

General Recommendations

In light of the arguments presented in this brief, the Fédération des Franco-Colombiens respectfully asks the Cabinet Committee on Confederation to support our views and to defend the concept of public participation in constitutional reforms by means of a constituent assembly, to embrace the concept of the perpetuation of linguistic duality in Canada and to redefine the national federation in terms of three main national communities, native, anglophone and francophone.

We also wish to thank the Cabinet Committee on Confederation for the opportunity it has given us to express our views.

Re-ordering Canada

By Dr. Walter G. Hardwick

Canada is politically destabilized and none of the remedies that are advanced, including the Allaire Report, entitled "Quebec Free To Choose", the Triple 'E' Senate, nor maintaining the status quo will restabilize it. All Canadians, including Quebecers, share a set of country-wide institutions and social and regional programs that make Canada one of the most civil countries in the world. Its geographic extent provides a diversity of resources, peoples, and international orientations that enable the country to adapt to changing internal and world circumstances. The commonwealth and francophone community relations give Canada an enviable entrée into two of the world's largest cultural, political and economic associations. Canada already has many attributes of size and diversity that Europe is seeking. Being modest-sized it is not tempted to take the international risks of super powers. Clearly these are sufficient reason to keep the country together. Yet throughout the country there is discontent, and the wounds, perceived or real, are deep. Yet mechanisms being put forward for country renewal offer little hope.

A promising route forward is for British Columbia to request that the constitutional negotiations be put on hold for a period, while the provinces seek ways and means to redress major regional grievances, including those of Quebec. Then and only then deal with constitutional amendment. Intuitively people know that to take on the constitution, the vaguest of documents, is like a squabbling family petitioning God to amend the Bible rather than setting their affairs in order. The alternatives are to follow M. Parizeau, so righteous and confident of his sovereignist goal that he will sacrifice the country; follow hold-out Premiers who opt for the status quo even with the continued alienation of Quebec; or embrace the Reform Party, so sure that equality of provinces in the Senate is a panacea for western alienation.

A decade ago the Pepin-Robarts Task force showed that Canadians recognized that both 'REGIONAL' and 'DUALISM' issues faced the country and needed to be resolved. Yet the policy of the federal government was one of increasing concentration of power. The regional issues, most prevalent in the west, were usually ignored. But history and geography do matter and, international orientation cannot be ignored.

Public opinion surveys in British Columbia report that nearly sixty percent of respondents want little change in the governance of Canada. However, those persons who have direct experience in or near government are aware of the extent of duplication and waste when two orders of government share social, economic, and environmental domains. Provincial officials liken Ottawa to a cookoo bird that lays its program eggs in the provincial or municipal nest, only to leave the offspring for them to bring up, or close down. There is widespread agreement that the currying of favour by federal officials of special interest groups has contributed to the problem. Yet much of the public is of the opinion that any devolution of powers to the provinces will weaken the country. They are wrong and it is time that the case for devolution of powers be made, — and listened to.

Regions of this country have been on distinctive trajectories for over a century and differ in history, culture, economy, and international orientation. The distinctions among them are real and valid. Common use of the English language is not a sufficient condition to expect similar interests among regions, spread as they are over four and one half time zones. Newfoundland, a former Dominion with Atlantic roots as old as New France, has little in common with the cosmopolitan Asia-Pacific orientation of southwestern B.C.

Quebec has four hundred years of distinction in language, culture, and law. At the same time Quebecers must recognize that just because western Canadians share the English language with others that there is not an 'English Canada' with common interests with which they can negotiate. There is not. Both regionalism and dualism exist, always have existed.

As a prerequisite to a re-ordered Canada, there needs to be very clear a statement by the Prime Minister of Canada that there cannot be a 'Quebec-Canada' agreement. Nationalists in Quebec continue to ask, 'what does English Canada want?', as if there is an English Canada. There is not and they need to be told so. By holding up the prospect of a Canada-Quebec agreement the Ottawa government fosters a wrong-headed belief and encourages those in Quebec who offer simple answers to complex problems.

If the Quebec Liberal party wishes 'to demonstrate our openness to the rest of Canada', to quote the Allaire Report, and acknowledge that '(m)any provinces are fed up with federal encroachment into their areas of authority', then it should work toward the resolution of both regionalist and dualist issues in parallel.

Premier Bourassa's government should join with those who generally agree with the Allaire Report's analysis, "The Trends to Centralization", and engage in political discussions with an aim to change federal-provincial agreements, alter taxation practices, amend stifling legislation, and archaic governmental conventions.

For those in Quebec who argue that a Quebec/Canada negotiation is all that is needed for separation need to be reminded that Canada was not created by the federal government. The conferences that brought about the formation of Canada in 1867 involved representatives of five proto-provinces, coordinated by the British, only four of which initially signed on. The outcome, the British North America Act recognized differing interests of various provinces including the distinct linguistic and legal traditions of Quebec. Other provinces entered later in a variety of ways and under differing conditions. Just as it was then a re-ordering of Canada can take place through a set of agreements among the provinces and regions of the country that wish devolution of powers as well as those provinces who wish to maintain services from the federal government. The present constitution is broad enough for most social, economic, and cultural interests of various provinces.

The division of powers among the provinces and the Ottawa government has been in flux since confederation. Some have been in favour of the centre, such as the Unemployment Insurance in 1940, and old age pensions 1951 and 1964, while others favoured the provinces through devolving tax points so that health and post secondary education became under provincial administration in the 1970s.

The governments of British Columbia, Alberta, Ontario and Quebec must reaffirm their commitment to those sections of the Constitution Act that provide for reasonably comparable levels of public service at reasonably comparable levels of taxation to all provinces. That will assure the maritime and prairie people that they will not be abandoned in a re-ordered country.

There is a notion in the land that any weakening of the power of Ottawa would threaten mobility of people among provinces. The realities are that school children transfer from province to province through mechanisms within which the federal government does not participate, and motor carriers are regulated in inter-provincial commerce without federal involvement. David Milne in a recent paper makes the case that there are now and have always been significant differences among the provinces in powers and in the reception of government largesse. On a host of areas from civil law, to education, senate representation, and economic development, no symmetry exists. The country has gotten along well enough with this.

To westerners central Canada interests have traditionally become Canadian' interests because of the political and economic clout of Ontario and Quebec. Historically, the two provinces centred on Montreal and Toronto, shared relatively equal status, and in fact an oscillation of influence between them kept Canada stable. However, central Canada is no longer a monolith. No longer are they dominated by two anglophone elites. It now comprises two provinces with widely differing agendas.

Canadians generally agree that Quebec has undergone several major transformations, first a cultural revolution where in the fields of art, literature, the theatre and film, Quebecers found a distinctive voice. Then in the arena of politics the distinct views of Trudeau and Levesque dominated the country's agenda. In the 1980s more attention in Quebec was directed at 'market nationalism' as a means of enabling Quebecers to be masters in their own house.

What is often gone unnoticed and unstated in the destabilization of Canada is the increasing pre-eminence of Ontario. A measure of Ontario's lead over Quebec is that between 1971 and 1988 Ontario added 1.7 million persons to a total of 9.4 million while Quebec added only 600,000 to a total of 6.6 million. In the same years Alberta and BC added 1.3 million to 5.1 million. In terms of dollar assets of headquartered corporations Toronto's primacy over all of Canada is overwhelming. The gross provincial product in Ontario, as a percentage of the Canadian total has increased from 34% to 41% since 1976. The preoccupation of Ottawa with Ontario issues is transparent to westerners, and incidentally to the Economic Council of Canada, who see high interest rate policies as an Ottawa response to their provincial problems.

It was already clear to the Robarts/Pepin Task Force on Canadian Unity that existing federalism was destabilized and that reality continues with the failure of the Meech Lake process. It is the result of a long process of transformation in Quebec, enhanced by the increasing political and economic clout of Ontario, and exacerbated by years of federal arrogance toward the periphery. Unitary state tactics cannot maintain a viable country as diverse as Canada.

Advocating an incremental change in powers among the regions and provinces of Canada falls within the trend of transnational change termed the 'Era of World Regionalism'. That is highlighted in the emergence of the European Community where nation states are delegating some of their sovereign power to higher authorities, while sub national jurisdictions are gaining a greater say over their own affairs. In some the urban-based regions are gaining influence. In others it takes constitutional form as among the states of Germany where territorial concerns are enshrined in their constitution. In still others sub-regions are decoupling themselves from national interests and choosing advantageous strategies within a context of European Community. These trends have parallels in the world of enterprise where some transnational companies, while expanding in size, are increasingly devolving authority to sub-units within them as a means of enhancing working life and incidentally corporate viability. So two simultaneous trends are observed, one of nation-states delegating sovereignty upwards to international communities, and another of devolving power to sub-regions. These insights have major implications to the Canadian system, between the federal and provincial, and the provinces and cities as well.

In April 1991 over 90 persons from British Columbia and Alberta voluntarily came together to devise ways and means of addressing regional grievances, including those of Quebec. They concluded that the adoption and application of a few key principles by federal and provincial governments will go along way toward resolving many deep-rooted and continuing regional problems. They flowed from several key understandings.

- Regions in this country have been on differing trajectories for over a century and differ in history, culture, economy, and international orientation. The distinctions are real. Common use of the English language is not a sufficient condition to expect similar interests among the various regions. (Please note, Bloc Quebecois).
- The federal, provincial, and local governments must be seen to form a system, and together, not separately be responsible for effective development and delivery of programs. Mechanisms for regular and effective involvement among officials is essential. Such is not the current practice nor the view of many in Ottawa who see the country more as a unitary state.
- The division of powers between the federal government and the provinces have been in flux from the time of Confederation. Some changes have been in favour of the centre, i.e. old age pensions and unemployment insurance, while other have been in favour of the provinces, i.e. the Established Programs Financing Act for health care and post-secondary education. No one should be overly surprised if they fluctuate once again.
- Services should be delivered as close to the customer as possible and there needs to be a demonstrable link between taxes and services received.
- Distinctions need to be made between policy development and service delivery and the locus of these decisions.
- There needs to be clear division of powers so it is clear what order of government is accountable and responsible for each policy and program. With these principles applied to existing statutes and federal-provincial agreements, the range of issues that would need be addressed constitutionally would be very limited indeed.
- Geography matters in Canada. The regions differ in orientation, yet current governmental organization cannot accommodate this real diversity. Its failure is measured in eroded confidence of the public in both politicians and experts alike. The reality of Canada is that many activities are site-specific, and local needs and interpretations are lost on distant central decision makers. Yet, given every new problem the federal government wades in and claims to be doing something,— anything. The expectations of results are magnified, then shattered and confidence in government is further eroded. This cycle will not be resolved through constitutional debate alone, it will be best solved by governments addressing the problems of organization and management and fixing what is not working.

The Conference concentrated of four major domains in which change must take place: management of resources and the environment; services and transfers to people; the enlargement of a Canadian common market; and accountability and responsibility in policy making and program delivery.

Resources: Control of natural resources is vested in the provinces and should remain there. In recent years the federal government has entered this domain, and in the process has confounded and confused both the public and business. Where resources are common between provinces Inter-provincial Accords should be made which incorporate dispute settling mechanisms outside the courts. In many instances management of resources could be further delegated by the provinces to sub-provincial areas of common resources and interests.

Where resources matters have international aspects, such as ocean fisheries, or in environmental problems such as acid rain, new procedures are required to establish national standards and Canada's acceptance of international standards. In the fisheries, fresh water fisheries are the preserve of the provinces while salt water fisheries are under federal jurisdiction. Clearly it would be desirable to have

both provincial and federal statutes administered by common officers.

The Conference suggested that if these organizational and statutory changes took place there should be a termination of federal Fisheries and Forestry ministries, and residue functions should be assigned either to Trade or Environment Ministries.

Services to People: Where services are delivered directly to people the most appropriate administration is at the community level, under provincial jurisdiction. This includes schools, now exclusively the preserve of the provinces, advanced education including training, health, corrections, and welfare services. For these services additional tax points and block grants should be transferred to the provinces. They in turn should have the power to shift resources among programs to meet specific local needs.

Financial transfers to people, such as old age pensions, child care allowances, handicapped, and veteran's support should be delivered by Revenue Canada. Provisions may be made for provinces to opt out where the level of services are maintained at reasonably comparable levels of taxation, as required under the Constitution.

The Conference recommended that the Unemployment Insurance Commission be independently financed and operated by employer and employee representatives. Insurance should not be an instrument of social policy. The Commission should be administered regionally and be empowered to meet local conditions while remaining within national standards. Where counselling and training are required, as matters of Commission policy, they should be purchased in the private and public sector through counselling firms and colleges and institutes.

In general the delivery of services should be devolved to urban-centred areas of provinces where true community needs can be served. The principle that underlies a shift of responsibility from the federal to provincial orders of government is logically extended to the sub-provincial scale. The provinces cannot make claims on the power and financial resources of the centre without following the principles and extending similar responsibility to the locales.

The federal government should concentrate its powers in a Ministry of Human Resources and close down Health and Welfare and Employment Ministries, and collapse many programs of the Secretary of State and other minor Ministries of State.

Common Market: The Conference called on the provinces to meet together to eliminate all barriers to inter-provincial trade in Canada by the year 2000. Consumers are penalized by a system of producer subsidies and a myriad of devices such as purchasing practices designed to limit trade. Consumers record displeasure by shopping in border States. The globalization of finance and trade and the U.S./Canada Free Trade agreement make it easier to import from abroad than from other provinces.

The governments of B.C. and Alberta should meet and work toward a trade accord as an example to other provinces. Intra-Canadian trade is less important to the far western provinces than other parts of the country because about 80% of trade is with the United States and overseas, especially with the Pacific Rim countries.

Policy making: The Conference identified the process of policy and program development by the federal government as one of the major problems in the country. This has nothing to do with the constitution, but a lot to do with practices adopted by Ottawa, modeled after U.S. and British experience. The nub of the problem is that Ottawa policy makers consult with special interest groups and academic advisors and largely ignore those provincial and local officials responsible for the implementation of programs. Special interest groups, organized on a national basis, have had increasing power at the expense of officials of the provinces and MPs. It is now part of the executive and bureaucratic process. The

Accord conferences noted that in business today, leaders regularly consult their operating and sales departments to remain viable. The analogy holds for the governmental sub systems.

The Conference acknowledged that although there are some matters that need constitutional change and that these need to be addressed, the majority of matters that are preventing the country from being as effective as it could be in generating wealth and providing services to people stem from existing practice. If there is political will these can be addressed immediately because many are in the form of Executive Agreements.

The desirability of an elected Senate within a democracy goes without saying. However, many of the issues involving regionalism can be remedied within the existing system. In Germany where territory matters, Lander interest is stated in every piece of legislation. In parliamentary practice in Canada every statute is a government statute and the majority party's confidence is deemed measured by each parliamentary vote. Not so in other federations. Many bills are dealt with in committee where all members can use independent judgment based upon regional interest, ideology, or moral judgment. These statutes are normally passed by a legislature unanimously. Only special bills, such as money bills, are designated for votes of confidence. These are changes in convention, and they could be altered simply by changing the rules of parliament or provincial legislatures.

A re-ordering of Canada needed a crisis to force it. That there is in 1991, in part precipitated by Quebec, and in part by changes in the global economy. British Columbia, one of those provinces that gives more to the country in taxes than it receives, and one consistently dedicated to a continuing and united country needs to lead political discussions with an aim to change federal-provincial agreements, alter taxation practices, amend statutes, and archaic governmental conventions. By these means the country will be re-ordered within the constitution. A practical and incremental course can be steered that will resolve many of the tensions within the country. It is a process for creating strength through diversity.

British Columbia and Canada's Future

By Mrs. Alma D. Howard

With the assistance of
Jakob Knaus

Opinion Requested

I am asked for my opinion on the matters of fundamental objective and principle as they relate to British Columbia and Canada in the future, as per letter from Honourable Bud Smith, Q.C., Chairman, Cabinet Committee on Confederation, Province of British Columbia, March 7, 1991.

This paper, respectfully submitted, is a "grass roots" opinion/formula for the difficulties facing British Columbia and, ultimately, Canada in the future.

Alma D. Howard (Mrs.), Private Citizen
Nanaimo, British Columbia

1. Aboriginal People - Land Claims

Native land claims MUST be dealt with. These problems must be resolved. settlement is not impossible. There has been far too much media sensationalism regarding this topic and far too little factual information relating to what the native people actually want getting through to the public.

Natives and non-natives alike have the same goals - to live together harmoniously as "Canadians".

Canadians must provide aboriginals with sufficient economically viable land in order to allow them to flourish through their own economic activities.

They should have self-administration on a municipal level - on their own allocated land - including, their own social laws.

One suggestion as to land that could possibly be used in lieu of existing claims - which now have homes and businesses on them - is provincial and federal parks. These parks are uninhabited and for he most part are in pristine, unspoiled condition.

If this suggestion were considered, there would of course, need to be conditions set whereby these parks would have to be maintained in good order. These lands could be used to provide the native people with an income through tourism, etc., and ultimately an opportunity for natives and non-natives to learn more of each others ways.

A stumbling block in settlement of these claims appears to be the misunderstanding of the word "ownership" as it relates to native perspectives and non-native realities. Only direct communication and serious negotiation will resolve this difficulty.

The native people feel very strongly about the environment. They do not feel they ever exploited it - but instead were in tune with nature. They did not "mine" the land for minerals or "clear cut" the forests. And, they DID NOT use massive "drift nets" to rape the sea of fish!

When the land bases are established in lieu of existing claims, the native people should be given the responsibility for whatever is above the surface of the land, i.e. food,fishing/hunting, forest management. However, mineral deposits below the surface of the land belong to ALL the people of Canada - and the share of profit on these resources must be divided in that manner.

Aboriginals living outside allocated land must be treated the same as any other Canadian and subject to all Canadian laws. The aboriginal people must not be condemned to live a parasitic existence - nor should ordinary Canadians be exploited by them "working the land/resources" while the aboriginals sit back and "cash in".

The Federal Indian Affairs Department must be abolished and the financial resources ($4,000 M. p.a.) utilized to provide needy aboriginals with "seed capital" for their viable

economic ventures. The present system feeds the fat bureaucracy of that Department - not the genuine needs of the aboriginals.

2. Constitution

We already have two law systems in government, i.e., the Napoleonic system in Quebec (top-down) and the British Common Law for the rest of Canada (bottom-up). Nothing stands in the way of allowing the aboriginals to have laws that meet the needs of their traditional social structure. (Did you know that the system used in the United States was adapted from a native system? Obviously there is much that can be learned from the aboriginal peoples of Canada).

Canadians want to have more "say" in government! The present oligarchy, perpetuated through the Westminster type of government - is no longer acceptable to be vast majority of Canadians. Checks and balances must be set up in order to control parliament/government.

A proportional voting system (i.e., one MP for every 100,000 citizens) would send a representative number of MPs to Ottawa - most likely resulting in a coalition government, as are in existence in most truly democratic countries around the world.

The EEE Senate would provide representation of the provinces. The House of Commons and the EEE Senate will do their parliamentary work - for which they are handsomely paid. However, as a further safeguard for acceptable legislation, the facultative referendum for laws and the compulsory referendum for changes to the Constitution must be introduced. Through such a system, the MPs would be compelled to truly represent their constituents and the Senators their Provinces/Territories.

Strict separation of jurisdictions must be enforced - in order to minimize the present duplication of the bloated, expensive, wealth-consuming bureaucracy! (The Senators will then fight any encroachment of the Feds on their provincial jurisdictions!)

EXCLUSIVE PROVINCIAL JURISDICTION should be;

- Social/Municipal Affairs
- Education*
- Culture/Language
- Housing
- Recreation/Sports
- Health
- Tourism
- Police
- Commerce/Industry
- Research/Development
- Fisheries
- Direct Taxation (Income tax)

*While immigration is a federal jurisdiction - who will fund English as a Second Language when Education is a Provincial jurisdiction? The Provinces have not been allowed any input into this - yet it IS a major problem/expense for the Province.

EXCLUSIVE FEDERAL JURISDICTION would cover;

- Defense
- Customs/Excise
- Currency
- Indirect Taxation
- Federal Debt
- Equalization Payments
- Agriculture
- Unemployment Insurance
- Communications/Telecommunications
- Energy
- Environment
- Citizenship/Immigration*
- Justice
- Foreign Affairs
- Post Office

*A landed immigrant can move to ANY part of Canada without restrictions. There CANNOT be separate immigration criteria for french-speaking and english-speaking immigrants. Quebec should never have been allowed separate provisions for immigrants to enter Canada because of language! This MUST BE corrected. NO SEPARATE agree-

ments with Provincial governments. ALL immigrants must have equal opportunity to enter Canada!

*(Should Quebec leave Confederation, then the whole question of bilingualism in Canada should no longer apply because there are far larger minorities in the rest of Canada, i.e. those of Chinese descent in British Columbia - which is a far larger majority than the French).

IT SHOULD BE WRITTEN INTO THE CONSTITUTION that the federal and provincial governments are not allowed to run financial deficits, except in times of war. The present public debts to be frozen at today's levels and reduced through proceeds from privatization and budget surpluses. Revamp taxation structure.

3. Taxation

There should be no federal income tax. All INDIRECT taxation (customs, duties, GST, etc.) to go to the federal government.

Provincial Sales Tax should be abolished and an equal amount applied to the GST.

All DIRECT taxation (income tax) to go to the Provinces.

All house and property taxes to go to the Municipalities.

4. Equalization Payments

Should be phased out over the next 25 years. Such payments are an artificial brake to economic dynamics. With today's easier *mobility of the population and competitive open markets, the human resources should move to economically viable areas of Canada.

*It would not be necessary to "import" human resources from other countries. Canadian citizens in depressed areas should/could receive assistance to relocate where there is work - possibly through Unemployment Insurance assistance program.

Our country is huge and apparently under-populated. There is sufficient room to provide everybody with a fair chance to earn an honest living. This would employ human resources and free-up financial resources for wealth-creating dynamics, benefiting the society at large.

*There would also be much less strain on educational systems in the Provinces which have to provide ESL programs. These Canadians already speak Canada's number one language - English!

5. Multiculturalism

The Federal Government's policies regarding multiculturalism has created the "hyphenated Canadian". It has made it possible for people to come to Canada and remain TOTALLY OUTSIDE of Canadian culture/traditions. They bring their wars and prejudices with them.

Consider recent immigration policy where a larger proportion of immigrants allowed for "family reunion" RATHER THAN productive/skilled workers. Non-productive seniors place an additional strain on medical plans and facilities, just to mention one area. Integration into Canadian society never occurs for the majority of these people.

While ethnic differences will always be recognizable among us, these must not be financially promoted/subsidized by public funds, which will only lead to an ethnic balkanization of Canada.

Emphasis should be placed on what we have in common and what unites us rather than what keeps us apart.

We can only be a UNITED country when we are ALL CANADIANS FIRST!

The funding for Multiculturalism should be used instead to reduce the public debt

6. Official Bilingualism

Must neither be coercive nor legislated - it must be voluntary!

Language and culture must be under the jurisdiction of the Provinces.

Only Federal Parliament and the Supreme

Court of Canada should be bilingual - as agreed to in the British North America Act of 1867.

The Official Languages Act (C-72), has definitely played a major role in dividing Canada. IT MUST BE ABOLISHED.

Canada has one NATIONAL language - English, and one REGIONAL langauge - French (Quebec and Acadia). NO ONE OR ANY REGIONAL LANGUAGE SHOULD BE IMPOSED ON THE WHOLE COUNTRY.

Canada is experiencing difficult economic times. To say the cost of implementing the Official Languages Act is non-inflationary (Finance Minister Wilson) is beyond comprehension: i.e.

Official Languages Commissioner Budget:

1988-89.....$219 MILLION
1989-90.....$626 MILLION

Plus (1989-90)

To Crown Corporations for "the timely implementation" of the 1988 Official Languages Act..... $ 5 MILLION

To the Treasury Board for the bilingual-bonus program .....$ 44.5 MILLION

The extra to CBC .....$ 81 MILLION

The grant to B.C. to translate legal documents .....$ 45 MILLION

(These figures are taken directly from the annual reports of the Official Languages Commissioner)

Plus:

The MILLIONS in grants to federally-funded lobby groups such as the Canadian Parents for French, etc.

Through Secretary of State's Office alone, for the Province of British Columbia .....$ 1.5 MILLION

Plus: The multiple MILLIONS per annum spent on French Immersion programs when this country has such a disgusting illiteracy rate.

Plus: The cost of DUAL LABELLING

The cost of DUAL SIGNAGE

The cost of French books for F.I. classes - 20% more

CANADA CANNOT AFFORD the luxury of catering to a small vocal minority.

In British Columbia alone, less than 1% of the population in mother-tongue French, yet there are 200 schools with French Immersion classes.

HOWEVER, in Quebec, - NO ENGLISH IMMERSION PROGRAMS EXIST!

But Quebec DOES HAVE Bill 178, which restricts the use of English on signs.

Furthermore, for those of you that don't know this ... in British Columbia, "home grown" teachers with excellent qualifications as teachers of french immersion are discriminated against because they do not have a "sound knowledge of the culture of French-speaking peoples".

Consequently, a home-grown teacher will be turned down in favour of a Quebec-born/background teacher

This information is taken directly from B.C. Ministry of Education Policy Circular ISSN 0823 0765, July 1987. (French Immersion Programs).

With the Federal Public Debt soon exceeding $400,000 MILLION and Provincial Debts exceeding $100,000 MILLION - Canada simply cannot afford to educate every Canadian in their transplanted mother-tongue.

Our priorities must be to reduce Canada's 30% illiteracy rate and 40% weakness in math. Our young people must receive a sound, basic education which will enable them to compete for jobs in the world market. It is the English language which is the international language of commerce, trade and science.

The funding for enforced, legislated bilingualism is many multiple hundreds of millions of dollars of taxpayers' hard-earned dollars per annum. This money does not come from a magic money tree!

These funds should be used instead to foster basic, quality education and any surplus to reduce the public debt.

7. Charters of Rights

All Canadian must have EQUAL STATUS - no special status for any individual or group of individuals.

With regard to Minority Language Rights (Section 23) the only minority language recognized by the government is French language rights. That should not and must not be. That, all by itself, has created a "special status"!

8. Foreign Aid

Charity begins at home!

When Canada has its own house in order, we will be able to give consideration to assisting others.

Until then - no more handouts.

9. Education

From Kindergarten up to and including Universities should be under the sole jurisdiction of the provinces.

It should be financed exclusively through provincial taxation.

This will do away with the offloading of federal responsibilities to the provinces. If the axiom of indirect taxation for the Feds and direct taxation for the provinces is established the provinces should have a sufficiently large tax base from which to raise the necessary funds.

The co-ordination of Education Canada wide should be established through regular provincial education ministers conferences, as is done in other developed, sophisticated democracies.

This conference should enforce nation wide uniform university entrance exams. High School graduates to have a choice to enter any university in Canada. Such exams are in force in OECD countries as Germany (Reifezeugnis) U.K. (GEC Advanced level), Switzerland and others (matriculation), France (baccalaureate) etc. In the EEC the trend is towards mutual acceptance of professional degrees/qualifications to practice in all EEC countries!

Such "free movement" to universities of their choice Canada wide would lend itself to specialization of universities in specific fields. This will result in excellence and useful research projects. It would allow less populated provinces to benefit from the expertise of the larger ones, and would allow them to find meaningful niches in university educational and research fields. Such specialization would utilize the faculty and financial resources in the most cost efficient manner. The private sector would contract out research more willingly if they know they can get something back for their dollars.

10. Voluntary Organization

Should NOT be publicly funded. There are over 1,000 arts, "culture", sports, women's, etc., organization which are federally funded in Canada - some up to 90% of their income. If a so-called "voluntary" organization cannot finance their needs themselves, their viability/need must be questioned. They must either consolidate with comparable organizations or have to "wind up" for lack of public support.

This should not prevent governments from CONTRACTING OUT needed services to such organization which satisfy basic social needs, such as, women's associations which operate transition houses and/or child care centers - however, THEN it is a CONTRACT and NOT A SUBSIDY.

11. Major Private Enterprises

Must stand on their own feet and MUST NOT BE FINANCED BY PUBLIC SUBSIDIES/HANDOUTS.

They MUST NOT DODGE THEIR TAX OBLIGATIONS. They ought to pay an annual minimum tax on their capital of, say, 2% - regardless of whether they show a profit or not. (Such 2% must be deductible from income tax due on annual profits).

12. Quebec

Canada is a Nation from sea-to-sea - which recognizes the indivisibility of Canada. Separation is not a legal right.

NO to Sovereignty Association

NO to Separation

NO to the constant demands for more concessions.

Quebec stays in Canada with the same status as all other Provinces.

It is the citizens of ALL of Canada who must determine if Quebec will be allowed to leave - and if so - what they will be allowed to leave with!

The Provinces of Canada must stand up and be counted.

They must put a stop to excessive federal government spending which has jeopardized the rights of ALL Canadians to a reasonable standard of living; quality education; necessary medical care and assistance for the less fortunate.

They must listen to and represent the people of their Province and not continue to be coerced, bullied and harrassed by a federal government overly representing one province, Quebec, and not CANADIAN interests.

Appendix "A"

Secretary of State Federal Grants for Francophones in B.C. $	89/90	88/89
Canadian Parents for French B.C.	98,800	95,610
Francophones Nanaimo	33,000	43,181
Francophones Kootenays	8,800	8,800
Francophones Campbell River	21,670	21,670
Francophones Kamloops	21,450	21,450
pre maternelle	—	3,000
Francophones Comox Valley	8,360	8,360
French Cultural Center Okanagan	31,900	31,900
Vancouver	173,490	154,000
French Canadian Circle Prince George	34,200	39,820
Club Bon Acceuil Powell River	24,750	24,750
Francophone Society Victoria	60,725	77,133
Maison d'Acceuil North Vancouver	4,645	nil
Societe Maillardville	17,050	17,050
forest festival	—	12,200
Maillardville Societe d'Entraide du Pacific	7,963	nil
Programme Cadre B.C.	187,405	156,700
Franco-Colombien Youth Council	51,000	19,403
Franco Colombien French Scouts	13,640	13,640
Franco Colombien Federation	571,120	645,375
Franco Colombien Historic Society	48,160	50,450
Pacific Dancers	5,000	5,000
Echo de Pacific	2,000	2,000
Disabled Women Network (Reseau etc. etc)	7,233	nil
Fete des Enfants	5,500	nil
Troupe de la Seizieme	80,000	81,000
Maison Francophonie Vancouver	59,326	69,700
Sub Total	1,577,187	1,602,192
less set up grants in 88/90	nil	58,150
Grand Total	1,577,187	1,544,042
*Additional Current Funds given in 89/90	* 33,145	

(Source Federal accounts pages 0136-1340)

Appendix "B"

Tables B - Census Data on Official Languages

Linguistic Composition of Canada By Official Language

1986 Census Results[1]

	Mother Tongue[2]			Home Language[3]		
	English	French	Other	English	French	Other
Canada	15,709,650 (62.1%)	6,354,840 (25.1%)	3,244,850 12.8%)	17,249,900 (68.9%)	6,015,680 (24.0%)	1,756,425 (7.0%)
Newfoundland	561,300 (98.8%)	2,670 (0.5%)	4,375 (0.8%)	559,770 (99.2%)	2,110 (0.4%)	2,135 (0.4%)
Prince Edward Island	119,175 (94.1%)	5,920 (4.7%)	1,555 (1.2%)	121,070 (96.8%)	3,485 (2.8%)	535 (0.4%)
Nova Scotia	818,905 (93.8%)	35,810 (4.1%)	18,450 (2.1%)	829,790 (96.0%)	24,720 (2.9%)	9,595 (1.1%)
New Brunswick	462,935 (65.3%)	237,570 (33.5%)	8,940 (1.3%)	478,125 (68.1%)	219,350 (31.3%)	4,385 (0.6%)
Quebec	678,785 (10.4%)	5,408,980 (82.8%)	44,695 (6.8%)	796,695 (12.3%)	5,343,210 (82.8%)	314,600 (4.9%)
Ontario	7,097,920 (78.0%)	484,265 (5.3%)	1,519,505 (16.7%)	7,798,355 (86.6%)	340,545 (3.8%)	862,270 (9.6%)
Manitoba	780,015 (73.4%)	51,775 (4.9%)	231,220 (21.8%)	915,415 (87.2%)	29,765 (2.8%)	104,130 (9.9%)
Saskatchewan	827,250 (81.9%)	23,720 (2.3%)	158,655 (15.7%)	934,890 (93.8%)	8,980 (0.9%)	52,835 (5.3%)
Alberta	1,946,725 (82.3%)	56,245 (2.4%)	362,860 (15.3%)	2,153,675 (92.0%)	24,910 (1.1%)	161,670 (6.9%)
British Columbia	2,366,805 (82.1%)	45,845 (1.6%)	470,725 (16.3%)	2,605,025 (91.4%)	17,575 (0.6%)	226,990 (8.0%)
Yukon	20,930 (89.1%)	620 (2.6%)	1,950 (8.3%)	22,665 (97.0%)	275 (1.2%)	415 (1.8%)
Northwest Territories	28,905 (55.3%)	1,420 (2.7%)	21,920 (42.0%)	34,430 (66.2%)	755 (1.5%)	16,855 (32.4%)

[1] Data adjusted by Statistics Canada to allocate those who claim more than one mother tongue of home language.
[2] Defined as first language learned and still understood. [3] Language most often spoken in the home.

Second-Language Enrolment in Public Schools

Province[a]	Year	Total school Population	Total Second Language Enrolment	French Immersion Enrolment	French Immersion Schools Offering immersion
Newfoundland	1977-78	156,168	67,791	95	3
	1988-89[p]	132,995	77,871	3,641	32
	1989-90[p]	128,540	78,200	4,000	35
Prince Edward Island	1977-78	27,628	16,495	541	7
	1988-89[p]	24,814	15,823	3,165	23
	1989-90[p]	24,170	15,600	3,300	24
Nova Scotia	1977-78	198,097	88,991	127	3
	1988-89[p]	167,600	100,450	4,410	58
	1989-90[p]	165,530	99,990	5,000	65
New Brunswick	1977-78	162,229	70,629	3,179	34
	1988-89[p]	136,528	77,309	16,452	104
	1989-90[p]	134,680	80,200	17,400	105
Quebec	1977-78	1,053,753	678,664		
(Students taking English	1988-89[p]	927,159	584,842	No English immersion	
as a second language	1989-90[p]	930,900	586,850	programs exist	
Quebec	1977-78	207,230	n.a.	17,754	n.a.
Students taking French	1988-89[p]	105,141	n.a.	19,000	n.a
as a second language	1989-90[p]	103.000	n.a.	19,000	n.a.
Ontario	1977-78	1,950,308	883,269	12,764	160
	1988-89[p]	1,868,211	1,056,606	116,697	840
	1989-90[p]	1,903,000	1,069,000	124,000	845
Manitoba	1977-78	221,408	85,619	1,667	13
	1988-89[p]	198,788	108,425	17,779	91
	1989-90[p]	197,840	109,300	19,000	95
Saskatchewan	1977-78	216,248	53,804	407	2
	1988-89[p]	202,493	106,958	9,476	60
	1989-90[p]	202,450	112,360	10,400	62
Alberta	1977-78	439,804	n.a.	n.a.	n.a.
	1988-89[p]	461,176	172,700	24,921	151
	1989-90[p]	467,800	184,600	27,000	155
British Columbia	1977-78	527,769	161,110	1,301	15
	1988-89[p]	499,996	216,537	24,292	187
	1989-90[p]	507,960	224,300	26,500	200
Yukon	1977-78	5,394	n.a.	n.a.	n.a.
	1988-89[p]	5,006	2,958	342	2
	1989-90[p]	5,110	3,120	370	2
Northwest Territories	1977-78	12,717	n.a.	n.a.	n.a
	1988-89[p]	13,449	4,001	366	4
	1989-90[p]	13,580	4,025	400	4
Total	1977-78	5,178,753	(1)	37,835	237
	1988-89[p]	4,743,356	2,524,480	240,541	1,552
	1989-90[p]	4,784,560	2,567,545	256,370	1,592

(1) Column adds to 2,106,372for 1977, while row adds to 2,240,949 for that year, owing to unavailability of immersion data for Alberta and the Northwest Territories and partial data for second language programs in Quebec. [a] Where no notation appears. French is the second language taught. [p] Statistics Canada estimate. [c] See Table D.2 for minority language education enrolment. [f] Includes grades k to 6, except Ontario (k-8): British Columbia and Yukon (k-7).

Constitution-Making for an Era of Transition

By Edward McWhinney Q.C.

1. An era of fundamental political and social change in the World Community and in Canada

We live in an era of transition and fundamental political, social and economic change, of a degree last seen in Western history at the end of the Thirty Years War and the inauguration of the "modern" era in international relations. As in all eras of transition, the emphasis and direction and content of the change are not always clear and are sometimes directly conflicting. It may have to be left to the historians, after the event, to provide a full inventory of what has been discarded from the past and what has been reformed or recreated so as better to serve contemporary needs and expectations. What is clear, however, is that Canadians today share with Russians and Czechs and Poles and Hungarians and what used to be called "East" Germans, and with peoples from many other societies, their desire for a better life – for peace and security, and health and well-being and enlightenment. They also expect their governmental institutions and processes, and also those who are mandated to operate them, to perform better, far better, than they have done to date.

In the Global Village in which we all live, the same "buzz-words", representing the same community values or imperatives, are heard around the World. The language of political communications has been truly internationalized.

What started as President Gorbachev's campaign slogans of the mid-1980's have come to be accepted into common parlance in Canada and elsewhere, acquiring their own independent momentum that may in many ways have transcended, by now, their original Russian models. We speak, thus, of a Perestroika, or fundamental reconstruction of government and society, implying a test of reason in relation to old institutions and processes inherited from bygone periods, and a consideration of the extent to which they either fulfill present functional necessities or else have become a clog on much-needed societal change and modernization. The correlative of Perestroika and its necessary precondition is Glasnost, which, translated simply and literally, means openness in government and in society: frank and honest and easy communication between government and citizen, and responsiveness of the governors to concerns expressed to them in such exchanges.

The indispensable accompaniment of all this, if the Perestroika process is not to be frustrated altogether, is New Thinking (novoe Mishlenie). As applied to Constitutional Law and Government, it means acceptance of Mr. Justice Holmes' great truth that it is revolting to have no more substantial justification for a claimed legal rule today than that so it was laid down in the time of Henry II. The intellectual ability to liberate ourself from the dead-hand control of the past, and the civil courage to do so, are necessary if we are to find constitutional solutions to present societal problems, and to find solutions that are effective and also still timely.

2. Lessons from past attempts at Constitutional renewal and modernization

(a) "Patriation" and the Charter of Rights, 1980-82

A retrospective cataloguing and evaluation of past official approaches to up-dating or renewing the Canadian constitution and

federal system, in much more tranquil conditions than the present and when there was also much more time, is hardly promising for the contemporary quest for present solutions to present problems. The half-century and more of intermittent federal-provincial inter-governmental negotiations over the devising of an autonomous, self-operating, all-Canadian constitutional amending machinery, looks, in retrospect, too like a special and unnecessary Canadian version of the Labours of Sisyphus. It is hardly relieved by the claimed success of the Trudeau Government's Constitutional Patriation exercise of 1980-82. In the near decade since adoption of the Constitution Act of 1982, it has been clear that, so far from making the federal constitution more flexible than it had been via the old Imperial, made-in-Britain route (which, being rooted in constitutional Convention, permitted, and also almost invariably ensured, a prior, patiently negotiated, inter-governmental consensus), the new post-1982 all-Canadian constitutional amending machinery has produced a Constitution that, for all practical purposes, is rigid and unamendable by front-door, legislative initiative. The search today, in consequence, has to be for more ingenious, indirect modes of substantive constitutional change that must operate, instead, through executive-administrative practice or inter-governmental mutual self-restraint, as informal "glosses" on the constitutional text.

Another, perhaps more important and long-range objection to that half century of federal and provincial governmental fixation on constitutional amending machinery must be that it preempted scarce intellectual resources and energies that might better have been devoted to substantive constitutional ideas on the nature and purposes of government today and the relation of the citizen to the state today. One needs to know the desirable content of a constitutional charter, revised or new - the what of Constitution-making - before one allows oneself to become the more or less helpless prisoner of process - the how of Constitution-making. I reached the conclusion in analyzing, some years ago, the history of what was then two decades of Québec's "Quiet Revolution", that a factor in the special failure of English-speaking political élites in Canada to comprehend the main imperatives and directions of the intellectual Risorgimento of the French-speaking political élite, and in the failure to offer what would then have had to be only very modest constitutional changes - but to offer them when they were still timely and before the situation had become pathological and politically out-of-hand - was the excessive, all too exclusive, preoccupation with constitutional process rather than constitutional substance. (See Quebec and the Constitution 1960-1978 [1979]). The same fatal flaw can be seen in the approach to the Trudeau Government's Patriation exercise, 1980-82. As much as anything, it explains the failure of the Trudeau project to resolve the principal problem to which it was supposedly directed, namely containing French-Canadian drives for constitutional self-determination within a new, and substantially restructured, Canadian federal system. The Patriation package, in its triadic scheme, gave us the new, all-Canadian constitutional amending machinery already referred to. As a second element, it gave us the largely symbolic rooting of the old British North America Act of 1867 - newly renamed, for the purpose as the Constitution Act - in indigenous, Canadian sources. In Kelsen's terminology, this implied the substitution of a latter-day Canadian Grundnorm (or political-legal basic premise or starting point) for an original, British one.

The third part of the Patriation package was the constitutionally-entrenched Canadian Charter of Rights and Freedoms. Contrary perhaps to the original expectations or intentions of those who conceived it, it has become by far the most popular element in the constitutional Patriation package, widely availed of by an increasingly combative general population who have quickly become experienced in U.S.-style public interest advocacy and special

interest litigation under the legal umbrella of a constitutional Bill of Rights. This has meant overcoming the formidable burden of a highly prolix, and rambling and discursive Charter text. For it is cast in extremely technical language that requires an experienced lawyer to reconcile its frequent antinomies and contradictions. It is, in its language and styling and its extreme length, the antithesis of Jeremy Bentham's injunction to make the law "cognoscible". It suffers, by comparison, with the limpid clarity of formulation and the elegant succinctness of the great U.S. Bill of Rights and of its even more celebrated contemporary, the Revolutionary-era French Declaration of the Rights of Man and the Citizen. Beyond that, and inexcusably, the drafters of the Canadian Charter of Rights and Freedoms failed to study, and so to anticipate, the effects of a constitutionally-entrenched Bill of Rights upon its principal enforcement agency, the Supreme Court of Canada, and also upon coordinate governmental institutions like the Cabinet and Parliament. Caught unprepared in terms both of their narrowly technical professional education and experience and also their system of selection and appointment (by federal Executive fiat), the judges have clearly been uncomfortable with the new political demands made upon them for a U.S. Supreme Court-style judicial legislation. And so they have vacillated uneasily between the poles of judicial activism and judicial self-restraint on the great political causes célèbres that the new, special interest group, classes of litigants have increasingly brought before them. The no-clear-majority, or at least no-clear-common-ground (ratio decidendi) decisions on the Nuclear Weapons testing and the Abortion issues, and more recently on Mandatory Retirement, have simply been the more notable examples. The Constitution-makers of 1980-82 were clearly at fault in failing to think their proposed reform through to its logical and predictable consequences, for the Supreme Court qua institution in its own right, and also for other, coordinate governmental institutions like the Cabinet and Parliament, when the judges would be asked to venture upon a new community policy-making, "legislative" rôle.

(b) The Meech Lake Accord, 1987-90

The failure to profit, even on a trial-and-error basis, from this earlier Constitution-making experience, is manifest also in the Mulroney Government's Meech Lake Accord project of 1987-90. It is one of the cardinal rules of Constitution-making to "pluck the blossom of the day": to recognize that successful constitutional drafting ventures can only proceed on a basis of a pre-existing societal consensus as to the nature and direction of the proposed change, and also that any such consensus is usually fleeting and hard to maintain, so that it must be acted upon promptly. The first large error in the Meech Lake process was clearly the excessive and, in terms of the disposition of the original political actors and signatories, unnecessarily long, three-year time lag, between beginning and end. A second large error, replicating exactly the problems with the Trudeau Patriation package of 1980-82 and its Charter of Rights and Freedoms, was the perversely complicated arrangement and heavily bureaucratic, "Germanic" language and styling of the Meech Lake Accord. It was much too long and much too difficult to understand as to its essence. It thus contained within itself the seeds of its own ultimate disaster, with the purely adventitious changes of government that in fact occurred among the signatory Provinces over the three year ratification period. It might have been politically useful and timely to appeal to the general public for their support in order to cajole or coerce the legally necessary unanimous Provincial legislative adoption. But, as conceived and executed as a "Governments'" and not a "Peoples'" project, the Meech Lake Accord proved quite incapable of rallying popular support when the political going became tough as the final legal deadline for ratification approached in 1990. The Meech Lake project, like the earlier

Patriation project, had never been approached on a basis of any really sustained and meaningful, direct public participation in the Constituent process, either at the constitutional initiation stage when the substantive content was being shaped and settled, or at the constitutional legitimation stage when the resultant package was being presented for final adoption as formal amendment to the Constitution Act of 1867.

3. Elements of a new, thoroughly contemporary approach to Constitution-making

From the lessons of the mistakes and failures of these two most recent ventures in fundamental constitutional change, by two (in Party political terms) quite different federal governments, we can discern the elements of a necessary new, thoroughly contemporary approach to Constitutionalism and Constitution-making in Canada, in the last years of the present century.

(a) Participatory democracy: using Peoples' power

First, the principle of Participatory Democracy, casually launched by Prime Minister Trudeau at the abstract rhetorical level but never concretely implemented by him or his successors, seems by now to be firmly accepted by the general public. We have never had an electorate better educated or better informed on public policy issues. What is clear is that both the Trudeau Patriation process and the Mulroney Meech Lake process have brought a strong public reaction against secret executive (inter-governmental) diplomacy as a solvent for constitutional-governmental ills and as a source for constitutional amendments. Woodrow Wilson's concept of "Open Covenants, openly arrived at", has now taken root in Canadian popular thinking. The institutional-processual implications for Constitution-making are immense. The most obvious and direct route to Constitution-making (on which there is a great deal of empirical data available in comparative legal science), is that of a popularly-elected Constituent Assembly having plenary powers both to conceive and also to elaborate a new constitutional charter, and then to adopt it in legal terms. A caveat seems immediately in order as to the "reception" (transferability) of foreign, comparative law models of Constituent Assemblies to the somewhat special political circumstances existing in Canada. All the empirically-based experience from other countries indicates that a Constituent Assembly can only succeed when it proceeds on the base of an already-existing popular consensus as to the fundamental political goals and purposes of the society concerned - what I have called, elsewhere, the "prior Constitutional question" (Constitution-Making. Principles, Process, Practice [1981]).

Such a prior constitutional consensus is manifestly not yet the case in Canada. We have reached no agreement - in Canada as a whole, or even within Québec itself - whether Québec should stay or go. You cannot make a Constitution on an "iffy" question, as President Roosevelt used to call them. If, however, - less than the ideal of a completely new or renewed federal system - we settle upon the making of amendments to the already existing constitutional charter according to the regular constitutional amending machinery already in place under that charter (Part V, sections 38-49), then the people could be accommodated, easily and quickly, to that process and fully brought in to the community decision-making involved. A British Columbia law, adopted with full, bi-partisan support in the Spring, 1991, session of the Provincial Legislature, would require a prior popular plebiscite vote, and approval Province-wide, of any future proposal for amendment of the Constitution Act of 1867, as a condition precedent to any vote by the Provincial Legislature purporting to ratify such proposal in terms of Part V of the Constitution Act. It is a model of

Participatory Democracy as applied to the Constituent process, at the Constitutional amendment adoption phase, at least.

(b) The Open Society: Representative Democracy and Electoral Laws

A second element in a new, contemporary approach to Constitutionalism, lies in application, in the spirit as well as the letter, of the principles of the Open Society to the structures and processes of Representative Government. The necessary premise of constitutional claims to the Sovereignty of Parliament today is that any legislative assembly should be elected on a basis of fair and balanced electoral processes. The Courts in Canada, following the lead given some years ago by their counterparts in Germany, the United States and elsewhere, are now beginning to scrutinize electoral apportionment laws and their formulae for establishing electoral boundaries and for determining the maximum and minimum permissible quotas of electors in the different constituencies. The Courts will do this, now, against a background both of the democratic rights provisions of the Charter of Rights and Freedoms (Part I, sections 3-5), and also, and more importantly perhaps, the Equality Rights (section 15).

(c) Ending a régime of special privileges for elected representatives and public officials

A third element in a thoroughly new, contemporary approach to Constitutionalism and Constitution-making is in the full spirit of the Equality-before-the-Law constitutional imperative. It involves correcting a contemporary, widespread public perception that a special régime of privileges and perquisites of office exists for federal government officials and their attendants in comparison to the rest of the community. There was a general reaction of surprise or shock when the National Citizens' Coalition, a Toronto-based public-interest advocacy group, laid bare detailed statistics as to the federal Members of Parliaments' specially-indexed pension arrangements, under which the scale of benefits, immediate and subsequent, bears little apparent relation to actual individual pension plan contributions, and no comparison to the more standard pension plans in the private, corporate sector. There have also been well-publicized reports of inflated per diem honorarium and expense allowance claims submitted by members of federal Royal Commissions, all federal government patronage appointments; and of the attempt by members of the federal Senate, federal patronage appointees all - to tack a substantial per diem expense allowance on to their existing salaries and allowances, an attempt that was frustrated only by a timely administrative veto by a vigilant Speaker of the House of Commons. Taken cumulatively, these items reinforce an impression of a lack of self-discipline or self-restraint, in the exercise of its prerogative powers on the part of the federal government and elected federal public officials. A decline in public respect for the federal government and its main agents, increasingly evident over the course of the past several decades, complicates and renders more difficult the rôle of the federal government in asserting political leadership and promoting national consensus on possible solutions to the current Canadian constitutional crisis, in its "Québec" and also its more general aspects. It makes all the more desirable and necessary constructive new constitutional initiatives at the Provincial level to fill the resultant gap in effective federal decision-making on these matters.

4. Some Rules of Prudence in Contemporary Constitutional Renewal

This study has been directed, above all, to the art of Constitution-making - what I have called, elsewhere, the when and why, and the who and the how of that branch of legal science (Constitution-Making, Principles, Process, Practice [1981]). But we may also

offer some "rules of prudence" to guide the what of Constitution-making - the substantive content of any new principles, institutions, rules, or processes to be advanced by the players in any new, or renewed, constitutional game:

(a) A larger, national outlook, and not a parochial, regional one

Any proposals for constitutional change must be reasonable in relation to the ideals and aspirations advanced by all Canadians for a better Canadian society. It doesn't make sense to adopt proposals for constitutional change based solely on a purely hypothetical situation: that they may or may not prove to be acceptable to some one party - Québec, for example - at some future time, and under some future conditions, still to be determined. The Constitution-making needs a larger intellectual optic than that, and must be implemented with a generosity of spirit that will include all constituent groups in our new Canadian society.

(b) Federalism as Pragmatism: the Many Roads to Rome

Don't become prisoner of purely a priori definitions of federalism, and of what a federal system can and cannot do! Such rigid, abstract doctrinal formulations may be indications of the intellectual limitations of their particular (often academic) authors, and not a useful guide to contemporary constitutional-governmental problem-solving. Federalism is, above all, a highly flexible governmental form, that requires pragmatism and flexibility for its successful operation; and the vagaries and varieties of federalism are many and richly nuanced, and provide many alternative models for problem-solving.

(c) An End to the Keynesian Constitution and Centripetal Federalism

Canada happens to be living, today, at the end of what is, by now, more than half a century of highly centralized, centripetal federalism. This has been marked by a concentration of decision-making power in the central government, involving both a creeping or incremental absorption of more and more erstwhile Provincial constitutional powers and also a moving in by the federal government to "grey" areas of decision-making where the location of constitutional competence (whether federal or provincial) has not been clearly defined in the constitutional charter. But this has been neither a necessary nor an inevitable historical trend in Canadian federalism, and it is capable of being corrected or reversed, if the popular consensus and the political will to do so are there. The centralizing trend was a response in considerable measure to Keynesian economic imperatives as perceived or understood, half a century ago, by Canadians political leaders and officials, in relation to particular political, social and economic events - the Great Economic Depression of the late 1920's and the 1930's, and the Second World War - that are now past and have receded into history.

(d) From Supreme Court to Constitutional Tribunal

The current, strongly centripetal, Canadian federalism was facilitated, and indeed encouraged and considerably extended, by the jurisprudence (course of decisions) of successive benches of the final Courts from the 1930's onwards. The Supreme Court of Canada judges are, of course, chosen by the federal government, through a wholly federal executive-based appointment process. Failure to re-examine the constitutional raison d'être of the Supreme Court in its to-be-expected, new rôle as specialized Constitutional tribunal, was one of the most notable gaps in the Trudeau Government's "renewed federalism", constitutional Patriation project of 1980-82.

(e) From a Court-enforced Battle of the Jurisdictions, to Joint, Cooperative Decision-Making

The Supreme Court of Canada, whatever the ultimate verdict on its fashioning of the latter-day, centralizing, centripetal trend in Canadian federalism, bears a heavy responsibility for the continuance of the old-fashioned, "watertight compartments" approach to community decision-making power in Canada. Stated simply, that particular judicial construct required that any exercise in Constitutional law-making competence be either federal or provincial; and that never should the two levels of government (federal and provincial), meet by way of mutually agreed or mutually tolerated overlap of power or even of positive inter-governmental cooperation in law-making. Such constitutional absolutism was made worse by the concomitant judicial insistence that the determination whether a claimed federal or provincial law-making exercise should fall one side or the other of the forbidden line, was to be achieved by purely abstract, a priori, "logical" reasoning and deduction from the original words of the Constitution Act of 1867 and the mountain of past judicial decisions thereon. These past judicial precedents had themselves been reached by similar modes of interpretation - unfettered by any public judicial examination of, or deference to, considerations of wise public administration and effective community problem-solving. Such a judicial approach, maintained today, flies in the face both of contemporary reason and also of contemporary, neo-Realist views of the judicial process and its limits. Modern decision-making power is, sensibly, shared power, in which all levels of government cooperate freely and usefully in preparing and implementing common joint solutions to commonly perceived problems. The Courts, rather than impeding or frustrating such Cooperative Federalism, should actively encourage its emergence.

(f) The Goal of a New and Wholly Contemporary Constitution: Political Limits and Possibilities

In Dr. Pangloss' "best of all possible worlds", it is possible to envisage starting from scratch and drafting a wholly new, and thoroughly contemporary, constitution, free from the dead-hand control of the past. In the visible absence of the substantial, and far-reaching, national consensus as to new constitutional goals that would alone make that possible, and also of the national political leadership and political will necessary to achieve that, we may have to be content, as in the past, with some more modest, incremental changes to the existing federal system. These would then have to build as best they can on existing modalities of constitutional change, such as these are now. Since the new constitutional amending machinery (Part V, section 38 - 49), effected by the Trudeau Patriation project in 1982, appears in historical retrospect as a constitutional step backwards and far worse than what it replaced in terms of the chances of yielding constitutional amendments, we may increasingly have to fall back on purely informal agencies of constitutional change to respond to urgent new societal interests and needs. These more informal processes are, variously, Constitutional Convention (custom) based upon mutually agreed or mutually tolerated inter-governmental actions; inter-governmental cooperation, achieved through informal, executive agreements or accords between the federal government and one or more, or even all, of the provincial governments, as "glosses" on the Constitution as originally written; even the "politic of mutual example" (as it was called in Soviet-Western interactions in the era of Détente), where one party acts unilaterally by way of voluntarily limiting or moderating its own policy-making in relation to another party, in the confident expectation that that good example will invite that other party to reciprocate, in kind and in measure. Pragmatic approaches such as this are the stuff of a working, cooperative federalism. They require imagination and wit and also

good faith and good will, if they are to be effective. Where they are applied in this spirit, however, and with the continuing political give-and-take that goes with it, they may be more likely to enter into the "living law" of the Constitution than formal constitutional amendments. Too often, in the past, these latter have seemed to invite compliance only according to their letter as written and not also according to the spirit of the laws. We are talking, now, of Federal Comity (Bundestreue). It is an intellectual attitude or mood that has, unfortunately, been lacking in our federal system, with the "confrontational" approach to federal-provincial inter-governmental relations that has burgeoned over the last several decades.

Thoughts on Constitutional Position for British Columbia

By Rafe Mair

I. A country cannot escape its history - nor can a province.

Canada did not come together as an act of love but one of defence, and perceived economic advantage. While some celebrated July 1, 1867, merchants in Halifax hung black crepe. One could argue, I think, that confederation was more in response to the ending of the American Civil War and the need to raise money in Europe, than any desire to build a nation from sea to sea.

British Columbia, upon entering confederation, was, in effect, a separate nation. Great Britain handled defence and foreign affairs, however she had shown no great willingness to enter a fight with the United States, B.C.'s only available enemy, so the defence restriction meant little. Control over foreign relations was similarly unimportant to British Columbians. In short, B.C. entered confederation as a high contracting party and of its own free will, primarily if not entirely as a business proposition. If the subject ever comes up, which, I take it is seldom, there are myths accepted by federal bureaucrats and politicians about how British Columbia came into being — this is understandable when you note that neither A.R.M. Lower's "From Colony to Nation" nor Edward McInnis' "Canada, A Political and Social History", both considered classic texts, even mention the name of B.C.'s first Premier much less spend any time on the political convulsions involved in her joining Canada. It is always assumed, it seems, that B.C. was part of some great migration of people across the prairies — that somehow we are really only Central Canada extended. While there was strong influence from Canadians prior to 1871, B.C. was, if anything, an American territory as a hangover from gold rushes. There was, as there is today, a strong-north south pull - in the early days, for example, mail from the colony went out via San Francisco. The importance of history - as well as the geographical realities which have always been of prime concern - to B.C./Canada relations is profound. We are not and never have been part of "The West" but are the Pacific Region which has always looked west and south as much if not more than east. This, if it has been understood at all by Ottawa (for which there is no evidence), has never been officially recognized. What has been seen by the Ottawa power clique as simply B.C. bitching again has really been frustration at the inability of the federal power structure to comprehend that British Columbia, like all political, social and economic units has historical, economic, geographic and demographic features which set it apart, and which must be taken into account.

II. The Constitution of Canada has always contained within it a fatal flaw which has made it impossible for the federal government to be a national institution - the Senate.

While we are accustomed to laugh at, or deride this upper chamber, the absence of a meaningful Upper House has exacerbated the feelings of estrangement in Atlantic Canada, the Prairies, and B.C. Conceived as a child born out of a shotgun wedding between the British House of Lords, ensuring that the rich are well represented, and the American Senate, it has failed dramatically to be a House of regional input. Part of that is because the Fathers of Confederation hedged their bets by loading the Senate with central Canadians and part, a good part, is because the Senators are appointed by the federal government, for which read the Prime Minister of the

day. While the Fathers of Confederation might have wanted regional representation, they made sure that Senators would be Prime Ministerial poodles - or perhaps, more accurately, federal government poodles.

The mistake was at least three fold.

First of all, it did not provide an effective voice with which less populated regions could offset the majority voice of Central Canada.

Secondly, because of the appointment process, the Senate never gained legitimacy in the eyes of Canadians generally, but especially of those living outside the center of power. Thirdly, and most importantly, it became perceived as just one more federal institution by which outer Canadians could be dictated to by Ottawa. I would argue that this perception was accurate.

It is argued that the provincial powers under Section 92 of the British North America Act are what confers regional clout. But while they do sometimes constrain Ottawa's power to legislate, they don't help with the real problem, the right of citizens of outer Canada to have a fair voice in federal structures. For a British Columbian is surely not only entitled to a voice in local matters but in federal ones as well.

Canada has become like a private corporation where the majority can always do whatever it pleases, so long as it allows the minority the right to bitch. Not surprisingly, minorities have chafed under such a system.

Where this majority oppression becomes very obvious is in appointment to federal boards, commissions and Crown Corporations. Such appointments are invariably disproportionately in favour of Central Canada and where "outer Canadians" are appointed, one can be sure that they are centrists by inclination.

It is argued that this can be offset by judicious appointments to Cabinet, but this is an illusion. B.C. M.P.'s know that they cannot become Cabinet Ministers unless they "go along" and very quickly local M.P.'s, very much including those in Cabinet, are seen as messengers sent back home occasionally to explain to the local folk what is good for them.

III. Because of its history and, as MacKenzie King pointed out, too much geography, Canada has never been able to establish a mythology.

The United States has developed legends - often more myth than legend - upon which to found a common patriotism. We have not, and as a wag once said, hating Toronto and the CPR is not enough to bind a country together.

Californians, for example, have as strong a feel for George Washington, the Declaration of Independence, Valley Forge and Bunker Hill as do New Englanders. The Heroes of the American Revolution and the making of the American Constitution are as much heroes to an Oregonian as to a Pennsylvanian.

American children would have no trouble recounting all that country's Presidents and Vice Presidents yet British Columbians would be hard pressed to write more than a handful of words about Cartier, Champlain, Isaac Brock, Tecumseh and Laura Secord and I doubt that there is one British Columbian in 1,000, make that 100,000, who could correctly identify, in sequence, the Prime Ministers of Canada. I doubt that a majority could even tell you the first one.

Frankly, the only events which have bound Canadians together in any spiritual or patriotic sense were the two World Wars and the Depression - and as these things recede into distant memories their importance as national glue wanes accordingly.

Canadians must, it seems, have their patriotism imposed from above. Super patriots like Pierre Berton and Mel Hurtig, both of whom have done very well out of that super patriotism I might add, lecture us about something which should be felt in the gut. The CBC is supposed to bind us together - these

days, evidently, with American sitcoms, government grants to the arts, which end up primarily in the hands of Toronto and Québec artists, are supposed to give us a sense of country.

It is so artificial - all turgid prose, no poetry. There is no one to blame for this - nor do ready solutions come to mind. For the country was not built on poetry and love but on more prosaic things like common distrust of our southern neighbour and a need for foreign investment.

This is not to say that there are no common bonds. International hockey and the occasional successes of our athletes bring us together - as did the Gulf War. What I do argue, though, is that any country which has to spend millions of dollars of tax money per year on propagating, through media advertising, a sense of patriotism, has a serious problem of identity.

IV. Provincial governments cannot speak effectively for their citizens in federal matters any more than state governments can do so in the United States.

The only way one can exercise power in federal matters is through effective participation in federal institutions which exercise power. There are many reasons for this. All but three provinces are clients of the federal government. One of the three, Ontario, has no need to use provincial clout to gain federal attention for the simple reason that they have a major power base in Ottawa. This leaves Alberta and British Columbia. Quebec does use provincial muscle, but it marches to its own drummer.

The fact that most provinces are "clients" of the federal government makes it all the more remarkable that Meech Lake was torpedoed by Manitoba and Newfoundland. Looking back at the abuse and dire economic threats heaped on Newfoundland especially, one can readily see that holding up federal initiatives through provincial powers is a dangerous course indeed for a "have not" province.

V. In order to understand the problem sufficiently to arrive at solutions, one must look at past mistakes.

1. Foremost amongst these is the bilingualism program which reflected remedies for ailments which only existed in three provinces, Québec, Ontario and New Brunswick. Ironically, Québec, the presumed beneficiary, has been the principal violator of the letter and the spirit of the program.
2. The Charter of Rights and Freedoms, a mixed blessing at best, has created a situation where judges can and do legislate, without putting in place any safeguards as to the appointment of these all powerful men and women. No longer simply the place where the law of the land is decided - indeed the Court resists hearing those sorts of cases - it now is the place where social policy is decided. The people have no say in who shall hold this great power - it reposes in the Prime Minister of the day. The more remote a region is from the Prime Minister, the more remote it is from control over the senior legislative body in Canada, the Supreme Court of Canada.
3. Meech Lake was a calamity which ought to have been strangled at birth. Not only was the process fatally flawed - even its most devout apologists concede that - it would clearly have given Québec a juridical weapon not possessed by others. The argument against the Accord was simple, but deadly apt - if the words "distinct society" were meaningless, why put them in? If they meant something (and judges were not likely to treat them as mere constitutional chatter) then what did they mean? The convulsions suffered by Premier Bourassa every time it was suggested that this phrase even be moved into

the preamble, much less eliminated altogether made many Canadians suspicious that at least one powerful politician felt the words meant something important.

The failure of Meech Lake has meant two developments, which I would argue are positive.

(a) Québec can no longer ease her way out of Confederation at a huge cost to the public purse - or, as Premier Bill Bennett put it, obtain divorce with bedroom privileges.

(b) Like Doctor Johnson's hanging in a fortnight, it has concentrated the mind wonderfully. Canada can no longer plod along secure in the dream that it can't happen here, so why worry about it. The failure of Meech Lake has provided Canadians with a crystallization of problems which have always been there. There is no excuse for a blurry focus now, though I fear it remains.

What must British Columbia do?

1. It must face reality, not only is there no certainty that the country can stay together as it is, there is no certainty that it can stay together in any form, period. July 1st speeches and bumper sticker slogans have their place, I suppose, but they're no substitute for applying real solutions to real problems. While it is difficult in the extreme for politicians - or indeed commentators - to spit out the strong possibility that our country might disintegrate it would be a gross betrayal of public trust not to admit of that possibility and develop alternatives.

2. It must have an articulate set of constitutional values and it must be prepared to allow the country to break apart if they are not, substantially, part of any reformed Canada. Hardnosed?

   Perhaps. But history teaches us that if you bury problems they don't stay buried. For every argument that time heals there is a more powerful one which says time exacerbates. One of the troubles with outer Canada is that it has not been tougher. Part of that, as mentioned above, is a fear of provoking the man with the purse. But British Columbia is, happily, in a position where it can speak for itself and others who share her concerns and values. B.C. won't weaken the chances for nationhood by being tough - that approach is the only hope the country has.

   We have allowed Ontario to get away with the myth that what is good for her is good for the land. Policies which can only be justified in the name of benefits conferred on the golden triangle are wrapped in the flag and sold as being in the national interest - and we've either bought it, or protested ineffectively. The only way British Columbia can put paid to Sir John A.'s "National Policy" is to stand up for a fair rearrangement now...or else. Any compromise resulting in a fundamental erosion of principles is simply postponing the agony to another day - a day when, perhaps, it might not be so convenient to put our position forward. As one might have guessed, I am a hawk on this subject. But federations which, in the name of patriotism, or for whatever reason, fail to address properly the rights of the geographically remote and the numerically inferior regions, disintegrate or are threatened with disintegration. There is no point in getting dewy eyed about constitutional reform for if you do, you simply play straight into the hands of those who oppose reform and use your tears as weapons to break down any lingering fight you might have.

3. The cornerstone of our position should be Upper House reform. In this regard, unrecognized by Central Canada or the national media, B.C. has played a major role in the past. I would submit that the proposals put forward by B.C. in the seventies have as much, indeed more relevance, today - with one exception. We

envisaged the Senate of that day as appointed by provincial governments. Most of us involved in that exercise would now concede that only popular election will give a Senate the legitimacy it needs.

The argument in favour of loading representation in the Upper House carries with it dangerous overtones. For to the extent you recognize population in the Upper House, you erode the principle of regional representation. I would reluctantly agree, however, that some "loading" could be conceded but only to a point. An upper limit of Senators from a region must be set - and it must be reachable by other provinces which attain this magic population figure. The difficulty with placing reform of the Upper House before central Canadians is that they will love it to death, as they did with B.C.'s proposals in the seventies. They will praise it all the way to the grave. In essence, they will talk it into oblivion. For what this is all about is power - and why would Ontario and Québec give up any of that commodity? And therein explains why I am a hawk - I know that the only way power can be extracted is by "force". There is no reasoning power away from anyone who has it. Unless Ontario is convinced that the only way to save the federation, out of which they have long profited so handsomely, is to yield power, it won't happen. This means that the continuation of the federation has to be the stake on the table or nothing of any consequence will be accomplished. Hard words, I know. Words which will be called irresponsible by those who only want to talk about change, not effectuate it. But they are the reality of negotiations of this sort - either we have a federated nation within which we all feel reasonably comfortable, or we have no federation at all.

4. The Senate must have the powers it presently possesses plus some important new ones. It must, as does the U.S. Senate, have the power to review key appointments such as Supreme Court of Canada judges, heads of federal institutions, and perhaps even members of the Privy Council itself. For it is no use having a constitution which, on paper, preaches fairness while in practice it allows one or two regions to run the whole show. We have a nervousness in Canada about open government and public review of men and women who would like to serve in high places by appointment. This national nervousness plays, of course, into the hands of those who like government by crony.

In summary, I do not believe that Canada will survive. This doesn't reflect my personal wish but is an expression of what I perceive reality to be. I think it is a serious mistake not to have "fallback" positions, positions we can take if the country does begin to disintegrate.

Of more importance, however, is my belief, founded on clear historical lessons, that you don't save a situation by papering over the causes of it. The temptation to yield on principle rather than be seen as an architect of disintegration is very strong indeed. The trouble is, yielding on principle simply postpones the moment of truth to another day when even greater harm will have been done and when it will be all the more difficult to do what was necessary in the first place.

If Canada is to survive, the Central Canadian hammerlock on the exercise of power must be broken. It must be broken in real terms, not just in theory. If we simply reshuffle the cards and then deal out the same hands, we will not only fail to accomplish anything, we will leave solutions to problems, which we have by neglect exacerbated, to future generations.

Canada's Future

by Cyril M. Shelford

There is no question that the future of Canada is at the crossroads and that without dynamic leadership during the next five years we will self-destruct. First of all, we as a nation have to develop clear goals for the future about which all people can get excited. We must feel proud to be Canadians. Logically, there are no people on earth that have more reason to be proud of their country than Canadians. Yet, for some strange reason, we turn inward to self-destruct. We see the destructive debates of English against French and Native Indian against all other national groups. Many ethnic groups are more interested in the racial problems they left back home rather than trying to fit into and getting a true feeling of being part of the Canadian way of life.

Also, strangely, for the last ten years or so Canadians generally have lost their tolerance of others and have turned rapidly into a 'me' society. This demonstrates clearly what history has shown over the centuries – that no society has yet learned to live in affluence, which seems to bring out the worst in people. Difficulties and struggling for survival, like Britain during World War II, brought out the best in people where they worked together to achieve a common goal. We, too, will have to develop a common goal and work together. It's unfortunate that all Canadians couldn't live in Lebanon, Ethiopia, the Soviet Union or China for a year or so. If this could happen, they would return with such pride in Canada that they would quickly overlook many of our problems and strive sincerely for solutions to make us a strong, united society, proud to lead the world towards reforms to make us an even better nation.

I have faith that there is still a majority of hard-working people who wish to see us united with clear goals for the future. The problem seems to be that not enough of them come forward to leadership as they look at the Canadian institutions of government and don't want any part of them. This has to change quickly if we are to survive as a nation. First of all, I think we have to take a look at what turns people off about the present system. I was in the provincial Legislature for twenty-three years (six of them as a Minister), so I'm more fortunate than most in being able to look at both sides. I've also been involved in many areas of society – from being brought up on a farm and staying there for most of my working life. On top of this, I was involved in logging, big game guiding, trapping, six years in the Canadian Army in Europe during World War II, and recently as a consultant on government affairs. I've had the opportunity to meet hundreds of people from all walks of life. As I describe in the books I wrote, From Snowshoes to Politics and We Pioneered, there is a real need for parliamentary reform in order for the average person to feel part of the system and comfortable that the decision-making process is fair to all segments of society. There are many examples of why people don't like it. Certainly, the one that turns people off is the party vote or whip system, which ensures that more than 99.5% of all votes in Parliament and the Legislatures are strictly along party lines; right or wrong, the party comes first.

Through this system, some very poorly, thought-out legislation and party policies get through the system. This enables Members of Parliament and members of provincial Legislatures to sit back with little thought, study or homework, knowing the vote will be strictly on party lines. On returning to their constituents when asked why they voted 'yes' on certain pieces of legislation they can answer, 'It was a party or caucus decision.' If there was a free vote on most legislation (other than Budgets), the Member would have

to do his or her homework and explain why he or she had voted the way they did. This system would not only ensure better thought-out legislation and policy, but, more importantly, the people back home would feel part of the decision-making process. People have to feel part of the system or else they become alienated from the system (which is the case today).

The Senate is another area where the people are completely left out of the total process, with the government appointing mainly party hangers-on to the Senate with absolutely no say from the people. Up until the recent G.S.T. debate in the Senate (if you can call it that), most Canadians were asking for reform and restructuring. It's probably the recent performance of the Senate that has made this impossible as very few Canadians have faith in the institution. I think we now have to abolish the Senate and consider a completely new structure. Its responsibilities will have to be clearly defined. In addition, Parliament will also have to clearly define the responsibilities of the new structure, as well as those of the federal, provincial and municipal governments, thus avoiding the duplication of services and so that everyone knows their area of responsibility. This alone will save the Canadian taxpayer millions of dollars a year.

This need became abundantly clear with the recent signing by the national government and the Province of Quebec of an immigration agreement which gives more power to the province. Yet people who come into the country should be, and are allowed to move to any province they like – clearly, immigration should be a national responsible, together with defence, offshore fisheries, foreign affairs, and some others.

The elected Senate (if that is what the new structure is called) could very well handle research as one of its functions by being the co-ordinator between the public, companies and universities. This would avoid duplication wherever possible and would ensure that we, as a nation, keep abreast of new developments in technology around the world. They should function as five distinct regions of Canada: Atlantic, Quebec, Ontario, the Prairies and British Columbia, and serve as a watchdog to ensure fairness to all regions of Canada. This group should also undertake a complete review of government spending habits and taxation to ensure a simplified and fair taxation system. This could well be a flat tax system and negative Income Tax, which would ensure all Canadians a minimum income without having a duplication of five different departments of government (both federal and provincial) trying to do the same thing through overlapping programs in Welfare, Indian Affairs, Unemployment Insurance, Immigration and various regional development programs. The savings would be several billions of dollars each year.

An area that will require a great deal of research and discussion will be the growing strength of multi-national corporations, which owe their allegiance to no country and which are already more powerful than governments and have a greater influence on the lives of the average Canadian than any government. In the years ahead, governments will be only penny ante players in the overall scheme of things. If things continue, they will have the power (if they haven't already) to make or break the economy of any country. If they don't get a tax break, subsidy or concession from one country, they will move on to the next, throwing thousands of people out of work. The people would quickly react and throw the government out of office. The new government would quickly bend its knees and offer ever more concessions to get the multinational corporation back and lose even more control of its destiny. We should take heed now. When you see that our average industrial wage is $13.75, the U.S. is $10.50 and Mexico is 85¢, naturally corporations will spend their money in low-cost countries rather than in high cost ones like Canada. Under Free Trade and G.A.T.T. (General Agreement on Trade and Tariffs), more and more they will move industry to low-cost areas and exert

more and more pressure on those nations with raw materials (like Canada, Australia, and resource-rich Third World countries) to give them better deals to extract raw products and move them to low-cost areas for processing. They now play one against the other and this pace will accelerate as these corporations grow. We cannot afford to sit back and let it happen without very serious thought as to the consequences of hiding our heads in the sand.

A very important change has to be made in our vision of Canada in the years ahead. First of all, Canada was established as two societies English and French. It should have been English-French and Native Indian. This is no longer true today and, in fact, whether we like it or not, we are a true multi-cultural society which will be far more difficult to keep together. Governments, generally, in order to stay in power will be inclined to give special rights to certain peoples, like the Native Indians and the Sikh community, where they have the right to wear turbans and carry kirpan knives. Other ethnic groups deserve similar rights, which greatly divides society – and does not in any way bring it together. What we must do is forget the ethnic make-up and develop policies for all Canadians, regardless of race. Special rights for any race do not help them; such rights only set them up as targets for every bigot in the country. It's time we forget about special rights and all become just Canadians – and proud of it. We cannot afford to let the government buy votes by giving special rights to any ethnic group. Having said this, there has to be a settlement of Native Land Claims; however, once this is complete, they, like the rest of us, must be just a Canadian – like every other nationality. This will make them proud of their past and bring confidence that they can make their way in life like any other nationality. As I've found in life firsthand, racial origin really means nothing. For example, while in the Canadian Army, many of my best friends were Native Indians and, while Minister of Agriculture, I could nearly always get Quebec to support me – Alberta and Ontario were normally the problem.

I'm proud to be a Canadian for good reason. Not only do we have the best country in the world with one of the highest standards of living, but we are also respected by most other countries in the world to such an extent that we could play a leading role in showing an exciting future for others to follow. If we falter now by granting special powers to any province, we will not only destroy ourselves, but we will also destroy others who follow our example. Canadians composed of nearly all races have fought with distinction in at least four wars. They were able to work together for the common cause of freedom and a way of life envied by all other nations. Why throw it away today by racial bickering and selfishness?

I trust this will be of some help to you in your deliberations on a vision of Canada in the years ahead. It's very probable that the defeat of Meech Lake will turn out to be a blessing in disguise, as it brought us Canadians to a stop in our march to self-destruction. I hope we will find a new path to the future which will bring us together for a bright future.